

CHAPTER 3 HPRB AND CFA REVIEW OF WORK AFFECTING HISTORIC LANDMARKS AND HISTORIC DISTRICTS

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300 GENERAL PROVISIONS

- 300.1 The Historic Preservation Review Board and Commission of Fine Arts review and provide recommendations to the Mayor's Agent on proposed work affecting historic landmarks and districts (D.C. Official Code §§ 6-1104 through 6-1107). The Board also conducts preliminary review (D.C. Official Code § 6-1108) and conceptual design review of projects before application for building permits.
- 300.2 The following terms specifically applicable to this chapter are defined in Chapter 99:
- (a) Conceptual Design Review;
 - (b) Preliminary Review;
 - (c) Subdivision;

- (d) Alteration;
- (e) Replacement in kind;
- (f) Demolition;
- (g) Permit Processing Division;
- (h) Surveyor.

301 CONCEPTUAL DESIGN REVIEW

- 301.1 Conceptual design review is not required before application for a permit, but is strongly encouraged for new construction, substantial alteration, or any other work requiring a significant financial outlay for the preparation of permit plans.
- 301.2 The purpose of conceptual design review is to allow applicants to benefit from the guidance of the Review Board and Commission of Fine Arts, or both, in advance of a permit application, and to allow the Board and CFA to review and take action at an early stage of design. Once completed, the process further enables the delegation of final permit review to the staff when appropriate.
- 301.3 An application for conceptual design review does not constitute a permit application. An application for conceptual design review is not subject to review by the Mayor's Agent, or to the review periods set out in D.C. Official Code §§ 6-1104 through 6-1108.

302 PRELIMINARY REVIEW

- 302.1 Preliminary review is not required before application for a permit, but may be appropriate in occasional circumstances. Conceptual review is recommended as the preferred method of obtaining guidance on whether a proposal is consistent with the purposes of the Act.
- 302.2 The purpose of preliminary review is to allow applicants to obtain an official preliminary finding of compliance from the Mayor's Agent in advance of a permit application. Before making this finding, the Mayor's Agent shall obtain the recommendations of the Board or CFA in accordance with D.C. Official Code §§ 6-1104 through 6-1108 and the procedures in this chapter.
- 302.3 Since a preliminary finding of compliance can only be made on the basis of plans meeting D.C. zoning requirements, zoning approval is required before an application for preliminary review is submitted to the Mayor's Agent for consideration.
- 302.4 An application for preliminary review does not constitute a permit application, but is subject to the required review period in D.C. Official Code § 6-1108.

303 PERMIT REQUIREMENTS: GENERAL

- 303.1 Permits are required for work affecting historic landmarks and historic districts, including demolition, alteration, subdivision, and new construction as described in D.C. Official Code §§ 6-1104 through 6-1107. The requirements for a construction permit are governed by the D.C. Construction Codes (12 DCMR Chapter 1).
- 303.2 Historic preservation review shall be part of the sequence of zoning and code reviews conducted before issuance of construction permits and subdivision plats by the Department of Consumer and Regulatory Affairs. The HPO shall coordinate with DCRA in determining the sequence of review for applications.
- 303.3 A separate historic preservation permit or certificate of appropriateness is not required.

304 PERMIT REQUIREMENTS: ALTERATION

- 304.1 Work considered an alteration under the Act shall include, but is not limited to, any of the following, regardless of whether or not the work is visible from public space:
- (a) Any alteration as defined in Chapter 99;
 - (b) Any addition to the building envelope;
 - (c) Any alteration or repair that does not involve replacement in kind of an architectural feature, including removal of an architectural feature such as ornamentation or historic signage;
 - (d) Construction of a projection into public space;
 - (e) Installation or replacement of a window, door, siding, roofing, or other exterior building finish;
 - (f) A change in the exterior appearance of a window due to work for which a permit is required;
 - (g) Installation of an awning, sign, or other advertising device;
 - (h) Construction or replacement of a retaining wall, fence, deck, patio, garden storage shed, swimming pool, or other site feature;
 - (i) Installation of air conditioning, mechanical, plumbing, or other equipment;
 - (j) Erection of a flagpole, antenna, satellite dish, or telecommunication tower;

- (k) Sandblasting and similar types of abrasive cleaning; and
 - (l) Paint stripping where a permit is required.
- 304.2 Pursuant to § 107 of the D.C. Construction Code, a permit is required for various minor repairs to historic landmarks or properties within historic districts, even though a permit is not required for the same work on non-historic properties. Under this provision, the Mayor's Agent shall review permits for the following categories of work:
- (a) Brick pointing;
 - (b) Replacement of windows and doors;
 - (c) Replacement of roofing and coping;
 - (d) Replacement of siding; and
 - (e) Replacement of retaining walls regardless of height.
- 304.3 Alteration to a designated interior historic landmark shall not include changes in furnishings.

305 PERMIT REQUIREMENTS: DEMOLITION

- 305.1 Work considered demolition under the Act shall include, but is not limited to, any of the following, as determined by the Mayor's Agent:
- (a) The removal or destruction of any façade;
 - (b) The removal or destruction of all or a substantial portion of the structural components of the building, such as structural walls, floor assemblies, and roofs;
 - (c) The removal or destruction of all or a substantial portion of the roof along with all or substantially all of one or more exterior walls;
 - (d) The removal or destruction of all or substantially all of an entire wing or appendage of the building, such as a rear ell, unless the wing lacks physical or historic integrity, or is not a character-defining feature;
 - (e) The removal or destruction of a substantial portion that includes character-defining features of the building or structure;
 - (f) The removal or destruction of all or a substantial portion of a designated interior landmark, unless the elements to be removed lack physical or historic integrity, or are not character-defining features; or

- (g) Any removal or destruction requiring a partial demolition or raze permit under the D.C. Construction Code, including any demolition of non-bearing walls, interior finishes, or other interior non-bearing elements within a building where an interior space has been designated as a historic landmark.

305.2 In general, the determination whether a proposal involves destruction of a building "in significant part" shall depend on the extent to which character-defining historic features, historic or structural integrity, historic materials, or ability to convey historic significance would be lost. This decision shall depend on all the facts and circumstances of the case.

305.3 The filing of an application for a demolition permit shall be considered to incorporate a request for determination whether the property contributes to the character of a historic landmark or district pursuant to § 704 of this title.

306 SUBMISSION OF APPLICATIONS

306.1 All applications including applications for conceptual or preliminary review shall be submitted to the Surveyor or the Permit Processing Division of DCRA, as appropriate.

306.2 No application substantially the same as an application denied by the Mayor's Agent shall be accepted for review under the Act within one year after the denial, except in the instance of an application denied for lack of information.

307 APPLICATION MATERIALS: FORMS AND FEES

307.1 Each application shall include a completed official application form, signed by the owner or authorized agent, together with any related filing documents required by DCRA or the staff. An application for demolition, alteration, or preliminary review shall be made by completing the appropriate D.C. construction permit application form.

307.2 An application for Board review shall include the appropriate transmittal form issued by DCRA, indicating the case number assigned for Board review and assigned for CFA review, if applicable.

307.3 The application shall include payment of the applicable filing fee as provided in Chapter 33.

308 APPLICATION MATERIALS: CERTIFICATIONS AND CLEARANCES

308.1 The application shall describe any outstanding permit violations for the property or any other historic properties under the applicant's ownership or direct control. If requested, the applicant shall submit a copy of any notice of violation or stop work order in effect.

The nature of outstanding permit violations and any proposed cure shall be considered vital information relevant to the review of the application.

- 308.2 An application for preliminary review, alteration, new construction, or subdivision shall include approval by the Zoning Administrator.
- 308.3 The application shall disclose the nature of any zoning variance, special exception, or code relief known to be required for the proposed work. If there is a Zoning Commission or Board of Zoning Adjustment order in effect for the property, the applicant shall submit a copy with the application. If requested, the applicant shall submit a copy of any pending application to the Zoning Commission or BZA.
- 308.4 If there is a conservation easement or preservation covenant in effect for the property, the applicant shall submit the easement or covenant holder's written consent to the application or to the project.
- 308.5 If the applicant intends to request approval of a transfer of development rights pursuant to the Zoning Regulations, the application shall so indicate.
- 308.6 If requested, the applicant shall submit documentation to verify any claim that adjacent property owners or the affected ANC have been notified of the proposed work.

309 APPLICATION MATERIALS: PHOTOGRAPHS

- 309.1 The application shall include comprehensive exterior photographs of the building, structure or site in question.
- 309.2 If the building, structure or site is in a historic district, the application shall also include photographs of the adjacent buildings and immediate neighborhood.
- 309.3 All photographs shall be of good quality, clearly showing the area to be affected by the proposed work.
- 309.4 When appropriate, annotated photographs showing proposed rehabilitation or repair work may be submitted instead of architectural plans.

310 APPLICATION MATERIALS: ARCHITECTURAL PLANS

- 310.1 An application for conceptual review shall include architectural plans or model photographs sufficient to indicate the general exterior massing, composition or design of the proposed work within its surroundings.
- 310.2 An application for preliminary review shall include architectural plans sufficient to indicate the exterior design of the proposed work within its surroundings.

- 310.3 A permit application for alteration or new construction shall include architectural plans of sufficient completeness to indicate the complete exterior design of the proposed work within its surroundings.
- 310.4 Architectural plans shall clearly show the character of the work to be performed. Plans shall be drawn to scale, fully dimensioned for critical measurements including overall width, length, and height. A progressively higher level of specificity with regard to the exterior design and dimensions shall be required for conceptual, preliminary, and construction permit applications.
- 310.5 Architectural plans shall be drawn and annotated in a manner that defines without ambiguity the nature and extent of proposed work.
- 310.6 Architectural plans for conceptual review, additions, new construction, and other substantial work shall normally include a site plan, existing conditions plans, floor plans, sections, and elevations showing adjacent structures.
- 310.7 Architectural specifications, materials samples, zoning envelope diagrams, shop drawings, or site mock-ups may be required if necessary for review.
- 310.8 The application shall clearly show the extent to which the existing building or structure is to be preserved, altered, or demolished.
- 310.9 An application for demolition shall include architectural plans or diagrams clearly showing the extent of proposed demolition.
- 310.10 An application involving an interior historic landmark shall include architectural plans sufficient to indicate the nature and design of proposed interior work. Plans may be in the form of or include annotated photographs.
- 310.11 An application for subdivision shall include a proposed plat of subdivision prepared by the Surveyor. An application for conceptual review of a subdivision shall include a proposed plat or a site plan clearly showing the proposed reconfiguration of the property.

311 APPLICATION MATERIALS: PROJECT DESCRIPTION

- 311.1 An application for new construction or substantial addition, including conceptual and preliminary review, shall include a brief written project description indicating the general nature of the project. This description shall state the program of uses, estimated gross floor area by use, number of residential units, scope of preservation work, and any other pertinent features of the project.
- 311.2 An application for construction of a project of special merit shall include a statement of the proposed grounds upon which the applicant intends to support this claim. The

application shall also include a general description of the information the applicant intends to submit as evidence of ability to complete the project.

- 311.3 The applicant shall also submit any other information as may be necessary to understand and evaluate the project for consistency with the purposes of the Act.

312 APPLICATION MATERIALS: ACCURACY AND ADEQUACY OF INFORMATION

- 312.1 All application materials shall accurately represent the existing conditions of the property and the nature of the work proposed. The entire scope of the proposed project shall be accurately represented in the application, except when the application is for a supplemental permit or permit for a portion of a phased project. The signature of the owner or the owner's agent on the application is considered to attest to its completeness and accuracy.

- 312.2 The Board may request any additional information as may be reasonably necessary for a decision or recommendation.

- 312.3 If an applicant does not supply sufficient information, the Board may defer the case until sufficient information is provided. If the applicant does not supply the information within a reasonable time period specified by the staff, the Board may return the application to the Mayor's Agent, and the Mayor's Agent may deny the issuance of the permit.

313 FILING DEADLINES

- 313.1 The Board may establish filing deadlines to allow sufficient time for staff review of applications before the Board meeting. The staff may defer to the next Board meeting any application not submitted in complete form, with all required information and documents, by the filing deadline.

- 313.2 The filing of an application by the filing deadline does not guarantee that the application will be heard at the next Board meeting. The Board or staff may defer applications to allow sufficient time for review, if additional information is needed, if warranted by the volume of cases, or for any other legitimate reason. If an application is deferred due to the volume of cases, the staff shall give it priority over new cases at the next meeting.

- 313.3 The staff may establish additional deadlines and requirements for the receipt of supplemental materials to be provided to the Board before its meeting. If an applicant fails to provide supplemental materials as required by the deadline, the staff may defer the case to the next meeting.

- 313.4 The following rules pertain to applications returning to the Board for additional review:

- (a) Refiling of the application and assignment of a new case number is not required unless the revision represents a substantially different project, the ownership has changed, more than two years has elapsed since the previous Board review, or the staff otherwise deems it appropriate.
- (b) The Board or staff may require the submission of revised plans or other information, and further staff review and consultation if necessary, before returning to the Board.
- (c) Submission deadlines shall be the same as for new cases, but the staff may exercise discretion in allowing late submission of revised or supplemental material.
- (d) An applicant directed to return to the Board is not guaranteed consideration at the next Board meeting, even if revised materials are submitted by the filing deadline. The staff may schedule the case as appropriate to allow sufficient time for review.
- (e) The staff may defer a case to the next meeting if revised plans or other information is not provided in sufficient time for review, if further revision or review is needed, or for any other legitimate reason.

313.5 The Commission of Fine Arts may establish filing deadlines at its own discretion.

314 NOTICE OF FILED APPLICATIONS

314.1 Notice of filed applications for demolition, alteration, subdivision, and new construction shall be placed in the *D.C. Register* as required by D.C. Official Code §§ 6-1104(a), 6-1105(a), 6-1106(a), and 6-1107(a), and Mayor's Order 79-50, as amended, or any subsequent Mayor's Order.

314.2 HPO may assist DCRA in fulfilling DCRA's responsibility to provide this notice in accordance with Mayor's Order 79-50, as amended.

315 TRANSMITTAL OF APPLICATIONS TO THE MAYOR'S AGENT AND CFA

315.1 DCRA transmits applications to the Mayor's Agent and CFA in accordance with Mayor's Order 79-50, as amended, and implementing procedures it may adopt.

315.2 The Mayor's Agent receives all applications transmitted by DCRA for review under the Act.

315.3 The Commission of Fine Arts also receives applications transmitted by DCRA for review under the Shipstead-Luce Act or the Old Georgetown Act.

- 315.4 If an application is subject to review by both the Mayor's Agent and CFA under the Act, the applicant shall submit a simultaneous application for review by each.
- 315.5 Each application received for Board review, except those to be reviewed by the staff under a delegation of authority, shall have an assigned case number. If the staff declines to review a case under delegation of authority from the Board, it shall be returned to DCRA for transmittal with a case number.

316 REFERRAL OF APPLICATIONS BY THE MAYOR'S AGENT

- 316.1 The Mayor's Agent shall refer to the Board all applications not referred to the Commission of Fine Arts.
- 316.2 The Mayor's Agent may refer to the Board any application referred to the CFA. The following considerations shall apply in these cases:
- (a) The Mayor's Agent may act upon the advice of the SHPO, Board, or staff in determining whether to refer an application to the Board.
 - (b) The Mayor's Agent may refer an application to the Board to obtain review under the standards in the Historic Protection Act and these regulations, in addition to the standards for CFA review under the Shipstead-Luce Act.
 - (c) An applicant, directly affected person, or Advisory Neighborhood Commission may submit a written request to the Mayor's Agent for review by the Board, stating the reasons for the request.
 - (d) An Advisory Neighborhood Commission may submit a duly authorized written request to the Mayor's Agent for review by the Board, stating the specific reasons for the request for duplicate review.
 - (e) Upon receipt of a request for duplicate review, the Mayor's Agent shall decide whether to refer the application to the Board, or shall refer the matter to the Board for its decision on whether a duplicate review would be appropriate.
 - (f) If the CFA declines to review an application for preliminary review, or does not accept this type of application, the Mayor's Agent shall refer the application to the Board for its recommendation.
- 316.3 The Mayor's Agent shall refer to the Office of Planning a copy of any application for which the owner intends to demonstrate special merit.
- 316.4 The Mayor's Agent may refer any application to any other District department or agency for review.
- 316.5 The Mayor's Agent may request any other person that the Mayor's Agent deems

appropriate to provide information and assistance.

317 REVIEW BY THE COMMISSION OF FINE ARTS

- 317.1 The Commission of Fine Arts and the Old Georgetown Board review applications in accordance with procedures they adopt.
- 317.2 The HPO may evaluate applications referred to the CFA, and may coordinate with the CFA and its staff in reviewing applications. The HPO staff may participate and provide public comment on behalf of the Board or SHPO in any review of a case by the Commission or the Old Georgetown Board.

318 REVIEW BY THE OFFICE OF PLANNING AND OTHER AGENCIES

- 318.1 The staff shall coordinate with the Office of Planning in reviewing any application for which the owner intends to demonstrate special merit.
- 318.2 The staff may coordinate with any other department or agency to which the Mayor's Agent has referred an application, and may also seek the advice or assistance of any agency or other appropriate person in reviewing applications.

319 EXPEDITED REVIEW UNDER DELEGATION TO THE STAFF

- 319.1 The Board may delegate to the staff its authority to review certain applications for minor work not likely to have a significant effect upon the historic character of designated properties. These applications shall not require individual referral to the Board.
- 319.2 The purpose of this delegation shall be to expedite the processing of applications for routine, minor, and compatible work so as to promote efficient administration of the Historic Protection Act in the general public interest.
- 319.3 Applicants shall qualify for expedited review only upon submission of sufficient information to support a determination that the proposed work is compatible with the character of the affected historic landmark or historic district. An applicant seeking expedited review shall submit all pertinent application materials required in §§ 304 through 310. The staff may reject for expedited consideration any application lacking proper documentation.
- 319.4 The staff shall review applications by applying written criteria adopted by the Board. These criteria shall include the design and construction standards in Chapters 20 through 29, as well as any design guidelines adopted by the Board in accordance with § 2003. The staff shall ensure that the Board's standards and guidelines are readily available to the public.

- 319.5 The staff shall maintain a public record of all approvals granted under this delegation of authority, indicating the address and type of work approved. The staff may provide regular notice of the cases approved under delegated review, either by mail or electronic mail to the public mailing list described in Chapter 32.

320 CATEGORIES OF WORK DELEGATED TO THE STAFF

- 320.1 The staff is delegated authority to review the following types of work:
- (a) Construction of insignificant or clearly compatible minor additions or alterations;
 - (b) Removal of insignificant or incompatible minor additions or alterations;
 - (c) Demolition of buildings the Board has previously determined not to contribute, or that clearly do not contribute to the significance of a historic district;
 - (d) Window and door replacement;
 - (e) Addition or closure of window or door openings in a manner consistent with the Board's standards and guidelines;
 - (f) Rear decks and roof decks not visible or obtrusive from a public street;
 - (g) Fences up to 42 inches high in front yards and up to 7 feet high in rear yards;
 - (h) Retaining walls, patios, garden storage sheds, swimming pools, and similar site features;
 - (i) Appropriate siding materials;
 - (j) Replacement of roofing, coping, gutters and downspouts;
 - (k) Skylights not visible or obtrusive from a public street;
 - (l) Installation, modification, or removal of exterior lighting fixtures;
 - (m) Antennas and satellite dishes;
 - (n) Air conditioning equipment, if suitably screened or unobtrusive;
 - (o) Plumbing and exhaust vents, if suitably screened or unobtrusive;
 - (p) Utility meter boxes;

- (q) Awnings, canopies, and signs consistent with the Board's standards and guidelines;
- (r) Unenclosed sidewalk cafes consisting of movable components;
- (s) In-kind repair or replacement of woodwork, metalwork, and other trim;
- (t) Brick pointing and cleaning of building exteriors, except by sandblasting or other damaging methods;
- (u) Excavation, sheeting and shoring, grading, blasting, and other ground disturbance activity;
- (v) Waterproofing and dampproofing; and
- (w) Other routine, minor, and compatible work consistent with the above.

320.2 The staff is delegated authority to review applications for the following types of permits subject to review under the Act or upon referral by DCRA:

- (a) Projection permits for projections consistent with work approved by the Board or delegated to the staff;
- (b) Public space permits for occupation of public space for dumpsters, barricades, and other construction activities, and permits for after-hours work;
- (c) Permits for temporary work, including temporary signs, observation stands, scaffolding, and other construction activities;
- (d) Renewal or revision permits for items consistent with work approved by the Board or delegated to the staff;
- (e) Supplemental plumbing, gas, mechanical, and electrical, and other specialty permits; and
- (f) Supplemental raze applications for non-contributing buildings or other structures pursuant to an approval by the Board or Mayor's Agent.

320.3 The staff is also delegated authority to review applications for the following types of subdivision, except in the case of historic landmarks or theoretical building sites as provided in D.C. Zoning Regulations:

- (a) Minor or insignificant lot changes compatible with the character of the property or its setting;
- (b) Conversion of assessment and taxation lots to record lots; and

- (c) Subdivisions required to implement a rehabilitation or construction project approved by the Board.
- 320.4 The applicant for subdivision of a property subject to a conservation easement shall submit written consent of the easement holder when requesting staff review.
- 320.5 The staff may decline to review any application under delegated authority if it deems appropriate.

321 PROCESSING OF APPLICATIONS UNDER DELEGATED REVIEW

- 321.1 Upon receipt of an application, the staff shall determine whether delegated review is appropriate. If at any time during the consideration of an application, the staff determines that it is not appropriate for delegated review, the staff shall require that it be filed for review by the Board.
- 321.2 If an application is appropriate for delegated review, the staff shall evaluate it for completeness. The staff may request additional information or documentation as may be reasonably necessary for its review.
- 321.3 Upon receipt of a complete application, the staff shall review it for conformance with the Board's standards and any applicable design guidelines adopted by the Board.
- 321.4 During the course of review, the staff may consult with affected Advisory Neighborhood Commissioners, historic preservation organizations, or potentially interested persons before taking an action on the application.
- 321.5 If the staff determines that the applicable standards or guidelines have been met, it shall be authorized to approve the application on behalf of the Board, and to use its delegated approval as a basis for final action by the Mayor's Agent.
- 321.6 Even if the applicable standards or guidelines appear to have been met, the staff in its sole discretion, or at the request of the Board, may nonetheless refer any matter to the Board either as a Consent Calendar or Agenda item.
- 321.7 If the staff determines that the applicable standards or guidelines have not been met, the staff shall allow the applicant to amend the application by submitting revised or supplemental materials to show conformance. If the applicant is still unable to show conformance, the staff shall inform the applicant of the specific reason for denial and shall submit the case to the Board on the Agenda or Denial Calendar.
- 321.8 Prior to referral to the Board, the applicant may request a meeting with the SHPO or the staff person designated by the SHPO to discuss the application of the standards or guidelines.

322 REVIEW BY THE BOARD

- 322.1 The Board shall hold regular public meetings for the purpose of reviewing applications for work affecting historic landmarks or historic districts. All Board reviews shall occur at a public meeting.
- 322.2 The Board shall review applications scheduled on its Agenda, Consent Calendar, or Denial Calendar. Cases on the Agenda will be heard by the Board in open session with the opportunity for public comment. Cases on the Consent Calendar or Denial Calendar will be acted upon based on submitted materials and staff reports without further public comment.

323 NOTICE OF BOARD MEETING

- 323.1 Not less than fifteen (15) days before a public meeting, the Board shall give notice of the meeting by first class mail to all those listed on the public mailing list described in Chapter 32, and shall give fifteen (15) day notice by electronic mail to all persons requesting electronic mail as an alternative or supplement to mailed notice. The Board may supplement this notice with announcements by facsimile or posting on the HPO website.
- 323.2 Notice of the meeting shall state the time, date, and location of the meeting, and shall include a list of cases to be considered, indicating the street address and nature of the application for each case.
- 323.3 Applicants shall be notified of the meeting by telephone, email, or other direct contact by the staff, or by a meeting schedule posted in the office where applications are filed for review.
- 323.4 The public notice shall be considered a list of potential cases for consideration, and not a guarantee that the Board will consider each case noticed for the meeting. The staff may approve some noticed cases under delegated authority before the meeting. The staff may defer other noticed cases for further consultation before Board review. The staff may also defer cases to a supplemental continuation meeting or to the next regularly scheduled meeting if necessary due to the volume of cases or other circumstances.
- 323.5 The Board shall release the proposed Agenda, Consent and Denial Calendars, and staff reports to the public not later than five (5) days before the meeting.
- 323.6 The scheduling of cases on the Agenda, Consent, and Denial Calendars shall be at the sole discretion of the Board and staff, and nothing shall preclude the Board from amending the scheduling at a public meeting.

324 STAFF REVIEW BEFORE THE BOARD MEETING

- 324.1 Before consideration by the Board, the staff shall review each case and consult with the applicant as necessary. The staff shall assist the applicant in understanding the Board's procedures and in meeting the Board's standards and guidelines. The applicant should take full advantage of the staff's availability and expertise.
- 324.2 The staff shall advise the applicant of any changes in project plans that may be appropriate in order to meet the Board's standards and guidelines. In response, the applicant may submit revised plans for further review. Revisions may be submitted without the requirement for a new application. If the applicant is unable to submit revised plans in sufficient time for staff review before the Board meeting, the staff may defer the case to the next Board meeting.
- 324.3 If the staff is unable to reach an applicant at the telephone number provided on the application, the staff may either process the application for Board review, or return it to DCRA with written notification to the applicant.
- 324.4 The applicant is encouraged to work directly with ANCs, historic preservation organizations, neighbors, and other interested groups or persons to identify and resolve any public concerns about a project before the Board meeting. The applicant is responsible for presenting project plans to interested groups or persons as appropriate. Resolution of concerns is not required prior to Board review, but applicants are advised of the great weight accorded to ANC views.
- 324.5 The staff may also consult with ANCs, historic preservation organizations, adjacent property owners, or any other persons so as to gather information, assess public interest, or identify the nature of public views on an application. The staff may facilitate public reviews as it deems appropriate.
- 324.6 ANCs and historic preservation organizations are encouraged to establish a schedule of regular meetings to facilitate their review of cases pending before the Board. Applicants are encouraged but not obligated to attend these meetings.
- 324.7 ANCs and historic preservation organizations wishing to participate on a regular basis in the Board's meetings are encouraged to establish a means of periodic contact with the staff in order to facilitate the review of cases before each Board meeting. Organizations may appoint a monitor familiar with the Board's standards, guidelines, and procedures as a means of facilitating a full and orderly involvement in the review process.
- 324.8 The staff shall prepare a written report and recommendation on each case the Board will review. Each staff report shall indicate whether the application is to be considered on the Agenda, Consent Calendar, or Denial Calendar. Each report shall evaluate the project for consistency with the purposes of the Act and with the Board's standards and guidelines, and shall recommend any modifications needed to achieve consistency.

- 324.9 Staff reports shall be submitted to the Board and released to the applicant and public at least five (5) days before the meeting.

325 REQUESTS FOR WITHDRAWAL OR DEFERRAL

- 325.1 An applicant may withdraw an application or may request a deferral of Board review by notifying the staff, in writing or otherwise, at any time.
- 325.2 If work has already been completed without the necessary permit, the staff may schedule the application for Board review regardless of a request for withdrawal. If scheduled for Board review, the staff shall inform the applicant of the time and place of the review in accordance with the procedures in this chapter.
- 325.3 An affected ANC may request a deferral of Board review of a case involving matters of significance to neighborhood planning and development, if the ANC has not received the requisite notice under the ANC Act (D.C. Official Code § 1-309.10). The ANC shall make this request by notifying the staff in writing or by electronic mail, at least 48 hours before the scheduled Board meeting. The request shall state that the ANC has not had sufficient opportunity to hold a duly noticed public meeting to consider the application. Upon receipt of a written ANC request, the staff shall defer the case for a sufficient time to ensure that the ANC has received notice of forty-five (45) days.
- 325.4 A person or group directly affected by a case may request a one-month deferral of Board review for good cause, but shall bear the burden of demonstrating the need for a delay in view of the applicant's right to prompt consideration by the Board. The staff may require that this request be made in writing. The staff shall determine whether to defer the case, and may consult with the Chairperson of the Board in making this determination.

326 BOARD MEETING PROCEDURES

- 326.1 The Board shall hold its public meetings in accordance with the procedures in Chapter 31.
- 326.2 The Board shall conduct public review of cases in accordance with a proposed Agenda released to the public before the Board meeting. The Board shall dispose of other cases by adoption of a Consent Calendar and Denial Calendar, as appropriate. The Board may amend the Agenda, Consent, and Denial Calendars at the public meeting as it may deem appropriate.
- 326.3 After considering each application and hearing public comments, the Board shall deliberate in public and vote on the case. In order to ensure that neighborhood views as expressed through the ANC receive specific attention in its deliberations, the Board shall give great weight to any properly adopted written recommendations of the affected ANC that are germane to the issues that fall within the Board's authority.

327 CONSENT CALENDAR

- 327.1 An application may be placed on the Consent Calendar if the applicant and staff agree that the proposed work is consistent with the purposes of the Act, and there is no known objection by an affected ANC, historic preservation organization, or affected person. Any relevant terms or modifications agreed upon by the applicant and staff may be included as conditions of the approval.
- 327.2 At the request of any Board member, the Chairperson may remove any case from the Consent Calendar and place it on the Agenda for individual consideration by the Board at the meeting. A request from any other group or person to remove a case from the Consent Calendar should be made to the staff in advance of the hearing and shall be considered as a preliminary matter at the hearing.
- 327.3 The Chairperson may also remove any case from a duly noticed Agenda and place it on the Consent Calendar, provided there is no objection from the applicant, any Board member, or any affected group or person present and wishing to comment on the case.
- 327.4 The Board may approve the Consent Calendar on a voice vote.

328 DENIAL CALENDAR

- 328.1 An application which has been denied by the staff pursuant to the Board's delegation of authority may be placed on the Denial Calendar.
- 328.2 Before submitting a case to the Board on the Denial Calendar, the staff shall inform the applicant of the reason for denial, and shall notify the applicant of the opportunity to present brief written materials to the Board for consideration along with the staff report. The applicant shall be afforded at least seven (7) days to submit these materials.
- 328.3 The staff report shall clearly state the reason for denial, indicating the specific standard or guideline violated.
- 328.4 At the request of any Board member, the Chairperson of the Board may remove any case from the Denial Calendar and place it on the Agenda for consideration by the Board at the meeting.
- 328.5 The Board shall consider both the staff report and the applicant's written materials in reaching a decision based solely on the written record. By adopting the Denial Calendar, the Board shall confirm the staff's recommendation of denial.
- 328.6 The Board may adopt the Denial Calendar on a voice vote.

- 328.7 If the Board recommends denial, the applicant may request a public hearing before the Mayor's Agent.

329 POST-MEETING PROCEDURES

- 329.1 Subsequent to each meeting, the Board shall make available for public inspection the minutes and any written transcript that has been made of the proceedings. The transcript shall serve as the official record of the Board's decisions at the meeting.
- 329.2 The staff may prepare a written summary of the Board's actions from meeting minutes and the transcript. The staff may also send written confirmation of the Board's action on an application.
- 329.3 If the Board recommends approval of the application, and the Mayor's Agent acts on that basis, the staff shall return the application to DCRA with the Board's recommendation and the appropriate notations on the application and accompanying plans. If the Board has conditioned its approval on specific modifications, the staff shall include those modifications as specific conditions on the application or plans, or shall require the applicant to submit revised plans, whichever the staff deems appropriate.
- 329.4 If the Board recommends denial of the application, the staff shall send written notice to the applicant within ten (10) days, stating the reasons for the Board's recommendation, and informing the applicant of the right to request a public hearing by the Mayor's Agent.

330 REPORT OF RECOMMENDATIONS TO THE MAYOR'S AGENT

- 330.1 After reviewing an application under D.C. Official Code §§ 6-1104 through 6-1108, the Board shall report its recommendations to the Mayor's Agent. This recommendation is in addition to any recommendation the Mayor's Agent may receive from the CFA.
- 330.2 The Board is not required to report a recommendation to the Mayor's Agent on an application for conceptual design review.
- 330.3 When demolition is involved, the Board's recommendation shall indicate whether or not the building or structure contributes to the character of a historic landmark or historic district.

331 FINAL REVIEWS DELEGATED TO THE STAFF

- 331.1 Upon completion of conceptual review, the Board may delegate final review to the staff, with any conditions or directions the Board deems appropriate.

- 331.2 If the Board approves a conceptual design and delegates final review to the staff, the applicant shall continue to develop the design in consultation with the staff. The applicant shall inform the staff of significant revisions and refinements of the design as they are incorporated into the project plans. If the project is large or complex, the applicant shall meet with the staff to ensure that the development of the design remains consistent with the Board's direction.
- 331.3 Upon the completion of the final design, the applicant shall submit the permit application and plans for staff review. An official transmittal with an assigned case number is not required for this submission unless the staff determines that the case should be returned to the Board for further review.
- 331.4 The staff may approve the permit application if the plans are consistent with the Board's conceptual review. If the plans are not consistent with the conceptual review, the staff shall consult with the applicant to resolve any discrepancies. If unable to reach a resolution, the staff shall require the applicant to file the case for further Board review.
- 331.5 The staff shall review final applications as expeditiously as possible. If the project is large or complex, the staff shall review final applications within fifteen (15) days of receipt.
- 331.6 The staff may place conditions on a final approval by annotating on the plans or by noting written conditions on the application form. The staff shall submit all final design plans and any annotations and written conditions to DCRA for inclusion in official permit files.

332 CONDITIONS OF APPROVAL

- 332.1 The Board's recommendations on an application, including an application for conceptual design review and preliminary review, remains in effect for a period of two years from the date of the Board's action granting conceptual approval. Upon expiration of this period, the applicant may return to the Board with a request for an extension of one additional period of two years for good cause shown. The Board is not required to reopen the review of the application, and shall not unreasonably withhold its approval of an extension. Upon expiration of the extension, or if the extension is denied, a new application shall be required for any further review of the project by the Board.
- 332.2 The Board's delegation of final review authority to the staff at the conclusion of conceptual review shall also remain effect for a period of two years from the date of the Board's action. After the delegation has expired, the applicant shall be required to return to the Board to request an additional two years on the basis of good cause shown. The Board shall not unreasonably withhold its approval of an extension. Upon expiration of this extension, or if the extension is denied, the staff shall return the application to the Board for final review.

- 332.3 The Mayor's Agent shall recognize any time limitations or any other conditions the CFA may place on its approvals.

333 SUBSTANTIAL CHANGES TO APPROVED PLANS

- 333.1 The applicants shall notify the staff of any change made to approved plans, either before or after permit issuance. A change includes any modification in the design, massing, proportions, dimensions, design, details, materials, finishes, or other aspect of the design that significantly or materially differs from the approved design, or affects the compatibility of the plans with the affected historic property.
- 333.2 The staff shall review a change to determine whether it is consistent with the approved plans and any conditions of the approval by the Board and Mayor's Agent.
- (a) If the changes are consistent with the approval, the staff shall indicate its approval by means of a stamp or notation on the approved plans.
 - (b) If the changes are not consistent with the approval, the staff shall consult with the applicant to ensure that the changes are revised to be consistent with the approved plans. If the staff and applicant are not able to reach agreement, the staff shall refer the matter to the Review Board for resolution.
- 333.3 Applicants shall obtain any construction permit or permit revision required as a result of a substantial change in project plans.

CHAPTER 4 MAYOR'S AGENT REVIEW OF WORK AFFECTING HISTORIC LANDMARKS AND HISTORIC DISTRICTS

Secs.	
400	General Provisions
401	Standards for Approval and Denial
402	Approval without a Public Hearing
403	Notification of the Intent to Schedule a Public Hearing
404	Notification of the Right to Request a Public Hearing
405	Scheduling of a Public Hearing
406	Notice of a Public Hearing
407	Supplemental Pre-Hearing Filings
408	Request for Party Status
409	Public Hearing Procedure
410	Issuance of Final Order
411	Conditions of Final Order

400 GENERAL PROVISIONS

- 400.1 The Mayor's Agent shall make the final determination on the approval or denial of applications for demolition, alteration, new construction, and subdivision subject to the Historic Protection Act (D.C. Official Code §§ 6-1104(e), 6-1105(f), 6-1106(e), and 6-1107(f)), and shall make preliminary determinations of compliance with the Act pursuant to D.C. Official Code § 6-1108.
- 400.2 The Mayor's Agent shall make these findings after having received and duly considered the recommendations from either the Review Board or the Commission of Fine Arts, or both, as appropriate.
- 400.3 The Mayor's Agent may make a preliminary or final determination without a public hearing, if not required by law. Any determination shall be made in accordance with this chapter.
- 400.4 If a public hearing is required by law, or the Mayor's Agent deems it appropriate to hold a public hearing, it shall be held in accordance with the provisions of this chapter and Chapter 30. As provided in § 104, the Mayor's Agent (Hearing Officer) may assume the duties of the Mayor's Agent for this purpose.
- 400.5 The Mayor's Agent shall take no action on applications for conceptual design review.
- 400.6 The following terms specifically applicable to this chapter are defined in Chapter 99:
- (a) Necessary in the public interest;
 - (b) Consistent with the purposes of the Act;
 - (c) Special merit;
 - (d) Unreasonable economic hardship;

- (e) Low-income owner;
- (f) Design.

401 STANDARDS FOR APPROVAL AND DENIAL

- 401.1 In making a finding on demolition, alteration, or subdivision, the Mayor's Agent shall apply the standard that no permit shall be issued and no subdivision shall be admitted to record unless:
- (a) Issuance of the permit or admission of the subdivision to record is necessary in the public interest, or
 - (b) Failure to issue a permit or admit the subdivision to record will result in unreasonable economic hardship to the owner.
- 401.2 In making a finding on new construction, the Mayor's Agent shall apply the standard that the permit shall be issued unless:
- (a) After due consideration of the zoning laws and regulations of the District of Columbia, the Mayor's Agent finds that the design of the building and the character of the historic district or historic landmark are incompatible;
 - (b) Provided, that in any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor's Agent may deny a construction permit entirely upon finding that any additional construction will be incompatible with the character of the historic district or historic landmark.
- 401.3 In making any determination, the Mayor's Agent shall consider the recommendations of the Review Board and Commission of Fine Arts, as applicable, giving due regard to their statutory role as advisors to the Mayor on the consistency of proposed work with the purposes of the Act.
- 401.4 In making a determination that work is necessary in the public interest because it is consistent with the purposes of the Historic Protection Act, the Mayor's Agent shall apply the criteria in D.C. Official Code § 6-1101(b), also stated in § 2002. The Mayor's Agent shall consider all applicable criteria in making a determination, and shall find that all applicable criteria have been met for a determination of consistency.

402 APPROVAL WITHOUT A PUBLIC HEARING

- 402.1 Upon receipt of a recommendation of approval from the Review Board or CFA, the Mayor's Agent may take any of the following actions without a public hearing, and

without further public notice:

- (a) When the application is for alteration or subdivision, or demolition of a non-contributing building or structure, if the Mayor's Agent finds the proposal consistent with the purposes of the Act, the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated.
- (b) When the application is for new construction, if the Mayor's Agent finds that the design of the building and the character of the historic landmark or historic district are not incompatible, the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated.
- (c) When the application is for preliminary review, if the Mayor's Agent finds it appropriate to issue a preliminary finding of compliance with the Act, the Mayor's Agent shall notify the applicant of this finding in writing.

402.2 If the Mayor's Agent has made a preliminary finding of compliance with the Act, upon receipt of a final permit application from DCRA, the Mayor's Agent shall find either:

- (a) That the final application is consistent with the approved preliminary application, in which case the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated; or
- (b) That the final application is not consistent with the approved preliminary application, in which case the Mayor's Agent shall refer the application to the Board or CFA as appropriate for further review.

402.3 The Mayor's Agent may delegate to the staff the authority to approve applications consistent with the recommendations of the Board or the CFA.

403 NOTIFICATION OF THE INTENT TO SCHEDULE A PUBLIC HEARING

403.1 Upon receipt of a recommendation from the Review Board or CFA, unless the applicant withdraws the application, the Mayor's Agent shall notify the applicant of the requirement to hold a public hearing if any of the following is involved:

- (a) Demolition of a building or structure that contributes to a historic landmark or historic district;
- (b) Subdivision of a historic landmark; or
- (c) A claim of unreasonable economic hardship or special merit.

403.2 Upon receipt of a recommendation from the Review Board or CFA, the Mayor's Agent shall notify the applicant of the intent to hold a public hearing, if deemed appropriate for any other reason.

- 403.3 The notice shall inform the applicant of any applicable fees for the hearing as provided in Chapter 33.
- 403.4 When the application is for demolition, alteration, or subdivision, the notice shall require the applicant to submit a written response within ten (10) days of receipt, stating one or more of the following as the applicant's claim:
- (a) That the issuance of the permit or admission of the subdivision to record is necessary in the public interest because it is consistent with the purposes of the Act as set forth in D.C. Official Code § 6-1101(b).
 - (b) That the issuance of the permit or admission of the subdivision to record is necessary in the public interest because it is necessary to construct a project of special merit; or
 - (c) That denial of the permit or failure to admit the subdivision to record will result in unreasonable economic hardship to the owner.

404 NOTIFICATION OF THE RIGHT TO REQUEST A PUBLIC HEARING

- 404.1 Upon receipt of a recommendation from the Review Board or CFA, the Mayor's Agent shall notify the applicant of the right to request a public hearing if either of the following applies:
- (a) If the Review Board or CFA has recommended that a proposed demolition, alteration, subdivision, or preliminary application is not consistent with the purposes of the Act; or
 - (b) When the application is for new construction, if the Review Board or CFA has recommended that the design of the building and the character of the historic landmark or historic district are not compatible.
- 404.2 The notice shall inform the applicant of any applicable fees for the hearing as provided in Chapter 33.
- 404.3 The notice shall require the applicant to request a hearing in writing within ten (10) days of the date of the notice, and to state one or more of the reasons in § 403.4 as the nature of the applicant's claim.
- 404.4 If the applicant fails to request a hearing, the Mayor's Agent may deny the issuance of the permit or admission of the subdivision to record without a hearing.
- 404.5 If the Mayor's Agent denies the issuance of the permit or the admission of the subdivision to record, the HPO shall notify the applicant in writing and return the application to DCRA with the denial indicated.

405 SCHEDULING OF A PUBLIC HEARING

- 405.1 Upon receiving a response to the hearing notice and statement of the nature of the applicant's claim, the Mayor's Agent shall schedule the hearing to occur within ninety (90) days.
- 405.2 If the applicant does not comply with the requirement to notify the Mayor's Agent of the nature of the applicant's claim, the Mayor's Agent may nonetheless schedule the hearing, and any delay caused by the applicant's failure to provide any information required by these regulations shall toll the running of the one hundred twenty (120) day period provided by the Act.

406 NOTICE OF A PUBLIC HEARING

- 406.1 The Mayor's Agent shall give notice of a public hearing not less than thirty (30) days before the hearing, as follows:
- (a) By first class mail to the applicant, the owners of all property abutting the property involved in the application, and the affected Advisory Neighborhood Commission; or
 - (b) By first class mail to all persons listed on the public mailing list described in Chapter 32.
- 406.2 Notice of the public hearing shall state the following:
- (a) The time, date, and location of the hearing;
 - (b) The name of the applicant;
 - (c) The case number and nature of the application;
 - (d) The street address of the property involved;
 - (e) The lot and square number of the property involved;
 - (f) The nature of the applicant's claim;
 - (g) The number of the affected ANC; and
 - (h) The filing requirements for participation as a party.

407 SUPPLEMENTAL PRE-HEARING FILINGS

- 407.1 In all cases, the applicant shall file the following information with the Mayor's Agent at least twenty (20) days before the public hearing:
- (a) A written statement setting forth the grounds upon which the applicant bases the claim of consistency, special merit, or economic hardship;
 - (b) Architectural drawings of sufficient completeness to indicate the proposed exterior design of the building, structure, or alteration within its historic context;
 - (c) Photographs sufficient to document the historic features or properties affected by the proposed work;
 - (d) A list of witnesses who are prepared to testify on behalf of the applicant; and
 - (e) Any additional information, reports, or other materials that the Mayor's Agent specified when scheduling the public hearing.
- 407.2 When the applicant intends to make a claim of unreasonable economic hardship, the applicant shall file the following information, by affidavit, with the Mayor's Agent at least twenty (20) days before the hearing:
- (a) The amount paid for the property; the date of purchase, and the name of the seller, including a statement of the relationship, if any, between the owner and the seller;
 - (b) The assessed value of the land and improvements on the land according to the two most recent assessments;
 - (c) The amount of real estate taxes for the previous two years;
 - (d) The amount of annual debt service, if any, for the previous two years;
 - (e) All appraisals obtained within the previous two years by the owner or applicant in connection with his or her purchase, financing, or ownership of the property;
 - (f) Any listing of the property for sale or rent, the price asked, and offers received, if any;
 - (g) Any consideration by the owner as to profitable adaptive uses for the property;
 - (h) For income-producing property, the amount of annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and annual cash flow for the previous two years; and
 - (i) For a low-income owner, a statement of present household income and the number of persons in the household.

- 407.3 The Mayor's Agent may require that an applicant furnish additional information that may be relevant to a determination of unreasonable economic hardship. The Mayor's Agent may provide in appropriate instances that this additional information be furnished under seal.
- 407.4 When the applicant seeks a bench decision, the applicant is encouraged to submit proposed findings of fact and conclusions of law to the Mayor's Agent at least twenty (20) days before the hearing.
- 407.5 If any required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with the affidavit a statement of the missing information and the reasons it cannot be obtained.
- 407.6 Unless furnished under seal, the staff shall make the applicant's supplemental filing information available for public inspection.

408 REQUEST FOR PARTY STATUS

- 408.1 Any affected person or group other than the applicant wishing to participate as a party in a public hearing shall file the following information with the Mayor's Agent not less than fifteen (15) days before the hearing:
- (a) The requesting party's name and address;
 - (b) Whether the party will appear as a proponent or opponent of the application;
 - (c) Whether the party will appear through legal counsel, and if so, the name and address of legal counsel; and
 - (d) A written statement setting forth the manner in which the party may be affected or aggrieved by action upon the application, and the grounds upon which the party supports or opposes the application.
- 408.2 The Mayor's Agent shall determine whether the person or group qualifies as a party as provided in Chapter 30.

409 PUBLIC HEARING PROCEDURE

- 409.1 The Mayor's Agent shall hold the public hearing in accordance with the procedures in Chapter 30.
- 409.2 The Mayor's Agent shall hold the public hearing within one hundred twenty (120) days of receipt of an application, but any failure to conclude the hearing within this time period does not constitute an entitlement to approval of the application.

410 ISSUANCE OF FINAL ORDER

- 410.1 Upon closure of the hearing record, the Mayor's Agent shall issue a final written order, including findings of fact and conclusions of law. The final order shall be filed with the record of the case.
- 410.2 The final order shall be based only upon the exclusive record of the hearing or any lesser portions of the exclusive record that may be agreed upon by the parties at the hearing.
- 410.3 The Mayor's Agent shall give notice to each party participating in the hearing, by serving the party with a copy of the final order.
- 410.4 The final order shall be issued as expeditiously as possible after closure of the hearing record.
- 410.5 The final order shall be effective fifteen (15) days after service.

411 CONDITIONS OF FINAL ORDER

- 411.1 The Mayor's Agent may include any conditions or restrictions deemed appropriate as terms of the approval.
- 411.2 As a condition of the issuance of a final order, the Mayor's Agent may require the execution of a signed memorandum describing the conditions of any negotiated settlement or consensus agreement among interested parties.
- 411.3 The Mayor's Agent may require that a project return to the Board or CFA for further review and refinement after approval, particularly when the project is described only in concept.
- 411.4 When approving a project of special merit, the Mayor's Agent may specify any documents or assurances the applicant must submit in order to demonstrate the ability to complete the project, as required for permit issuance.
- 411.5 The Mayor's Agent may impose a performance schedule as a condition of any order, and may impose a time limit on the validity of any order. If no time limit is specified, an order shall be considered valid for a period of five (5) years.

CHAPTER 5 ARCHAEOLOGICAL RESOURCES

Secs.	
500	General Provisions
501	Historic Properties Designated for Archaeological Significance
502	Historic Properties with Potential Archaeological Significance
503	Projects Involving a Public Hearing by the Mayor's Agent

500 GENERAL PROVISIONS

- 500.1 Both the D.C. Inventory and National Register provide for the designation of historic and prehistoric archaeological sites, and both include properties in the District of Columbia designated for their archaeological significance. In addition, some properties designated largely for reasons of architectural or historical significance also possess archaeological significance. However, for the majority of designated properties, including historic districts, the potential for significant archaeological remains has not been fully evaluated.
- 500.2 In reviewing proposed work under the Historic Protection Act (D.C. Official Code §§ 6-1104 through 6-1108), the Mayor's Agent and Review Board shall consider impacts on designated archaeological sites that may be affected by ground disturbance.
- 500.3 The Board and staff may also consider potential archaeological sites during the conceptual or preliminary design review processes. The goal of this review is to identify, protect, and when appropriate allow for the recovery of information on archaeological heritage of the District of Columbia that may be adversely affected by construction or development.

501 HISTORIC PROPERTIES DESIGNATED FOR ARCHAEOLOGICAL SIGNIFICANCE

- 501.1 For properties designated solely or in part for their archaeological significance, the Board and staff shall determine the effect of the proposed work on the designated archaeological features, and shall recommend an appropriate treatment consistent with the Guidelines for Archaeological Investigations in the District of Columbia ("Archaeological Guidelines"), as prepared by the staff.
- 501.2 Upon receipt of a permit or conceptual review application affecting a property designated for archaeological significance, the staff shall determine in consultation with the applicant if the proposed work is likely to affect any archaeological site on the property. The staff shall consult with the applicant with the objective of reaching agreement on an appropriate treatment for the affected archaeological site, consistent with the Archaeological Guidelines.
- 501.3 Dependent on the circumstances, appropriate treatments may include avoiding disturbance of the site, archaeological testing, or excavation and recovery of artifacts

and data. If the staff and applicant reach agreement, the staff may approve work covered by the delegation of authority in Chapter 3.

- 501.4 The staff shall determine whether review by the Board is appropriate, depending on the significance of the property and the circumstances of the case. If the staff and applicant are unable to reach agreement on a scope of work, the staff shall refer the case to the Board for consideration in accordance with the procedures in Chapter 3.
- 501.5 The Board may recommend that an archaeological site not be disturbed, or if disturbance is unavoidable, may recommend that the Mayor's Agent require the applicant to undertake investigation of the features in a manner consistent with the Archaeological Guidelines.
- 501.6 The Mayor's Agent may impose specific conditions or requirements for archaeological investigation as appropriate.

502 HISTORIC PROPERTIES WITH POTENTIAL ARCHAEOLOGICAL SIGNIFICANCE

- 502.1 Upon receipt of a permit or conceptual review application affecting a property likely to possess archaeological significance, the staff may consult with the applicant to consider the potential for archaeological investigation. The staff shall conduct preliminary archival research, or have this research conducted by others, to establish whether there is sufficient evidence to anticipate the presence of archaeological resources that might warrant further investigation.
- 502.2 If the staff determines in consultation with the applicant that significant archaeological potential exists in a project area, the staff may recommend to the Board that archaeological testing, and excavation if appropriate, be conducted before ground disturbance. The Board shall consider these recommendations in accordance with the procedures in Chapter 3. These investigations shall not normally be expected of homeowners or small businesses, unless the applicant agrees after consultation with the staff.
- 502.3 If an applicant agrees to undertake archaeological investigation, the staff shall assist in identifying archaeological consultants meeting National Park Service professional standards as described in 36 CFR 61, in preparing a scope of services consistent with the Archaeological Guidelines, and in any other manner deemed appropriate. The Board shall resolve any failure to agree on the scope of an investigation.

503 PROJECTS INVOLVING A PUBLIC HEARING BY THE MAYOR'S AGENT

- 503.1 In cases referred to the Mayor's Agent for approval after a public hearing, the Board may recommend that specific actions be taken to avoid disturbance of known or potential archaeological resources. The Board may also recommend to the Mayor's

Agent that specific levels of archaeological investigation be undertaken before disturbance of known or potential archaeological resources.

- 503.2 In making recommendations for archaeological investigation, the Board shall consider the overall scope and extent of a proposed project and the financial capacity of the applicant. Specifically, the Board may recommend that the Mayor's Agent require archaeological investigation to be undertaken in cases involving demolition of historic structures, substantial impacts on historic landmarks or districts, or a substantial amount of new construction. The Board shall not normally expect homeowners and small businesses to incur the cost of undertaking archaeological investigation.
- 503.3 The Mayor's Agent may impose specific conditions or requirements for archaeological investigation as appropriate.

CHAPTER 6 ZONING AND OTHER ADMINISTRATIVE REFERRALS [RESERVED]

CHAPTER 7 CERTIFICATION OF HISTORIC BUILDINGS AND STRUCTURES

Secs.

700	General Provisions
701	Method of Evaluation
702	Contributing Buildings, Structures, and Sites
703	Non-Contributing Buildings, Structures, and Sites
704	Application for Certification
705	Certification of Buildings Proposed for Demolition

700 GENERAL PROVISIONS

- 700.1 The Board shall determine whether buildings or structures contribute to historic districts or landmarks for the purposes of the demolition provisions of the Historic Protection Act (D.C. Official Code § 6-1104(c)). This determination shall be based upon the standards for contributing and non-contributing buildings established by the National Register of Historic Places.
- 700.2 The SHPO shall certify whether buildings or structures contribute to historic districts or landmarks for the purposes of D.C. Zoning Regulations (DCMR Title 11), the Targeted Historic Housing Tax Credit (D.C. Official Code § 47-1806.08), and other purposes as appropriate.
- 700.3 The SHPO may seek the advice and/or consent of the Board on any determination with respect to certification.
- 700.4 The following terms specifically applicable to this chapter are defined in Chapter 99:
- (a) Contributing building, structure, or site;
 - (b) Non-Contributing building, structure or site;
 - (c) Period of significance;
 - (d) Integrity; and
 - (e) Location, design, setting, materials, workmanship, feeling and association.

701 METHOD OF EVALUATION

- 701.1 Historic districts and landmarks are identifiable entities that possess and convey historic significance as a whole. To meet the integrity requirement for designation, the preponderance of buildings and structures comprising a district or landmark shall contribute to its historic significance. Most districts nonetheless contain some buildings or structures that do not contribute to the significance of the district. Some landmark sites may also include buildings or structures that do not contribute to the significance of the landmark.

- 701.2 A building or structure shall be evaluated by comparison with the established historic significance and physical attributes of the overall district or landmark. The determination of whether a building or structure contributes to historic significance shall be based on information such as date of construction, function, associations, and physical characteristics. The determination for an archaeological site shall be based on an analysis of the information potential of the component element.
- 701.3 An addition to a historic building, particularly an addition that is largely self-contained, may be evaluated separately for a determination of significance. An integral element of a building or structure shall not be evaluated separately for this purpose.
- 701.4 A contributing or non-contributing determination made at the time of a historic district or historic landmark designation shall be presumed to retain validity unless a re-evaluation is warranted due to physical change, the availability of new information, or the passage of time since the designation was made.

702 CONTRIBUTING BUILDINGS, STRUCTURES, AND SITES

- 702.1 The following considerations apply when determining whether a property meets the definition of a contributing building, structure, or site:
- (a) A building or structure adds to a district's sense of time and place and historical development by virtue of location, design, setting, materials, workmanship, feeling and association;
 - (b) A building or structure adds to the historic associations or historic architectural qualities for which a district is significant because it dates from the period of significance, relates to the documented significance of the district, and possesses historic integrity; and
 - (c) An archaeological site adds to the archaeological values for which a property is significant because it was present during the period of significance and is capable of yielding information about the period.
- 702.2 A building, structure, or site may also be determined contributing if it independently meets the criteria for listing in the D.C. Inventory or National Register.
- 702.3 For some historic districts, contributing buildings have been specifically identified at the time of designation. However, the district may include buildings, structures, or sites that have achieved significance since the time of the district's designation. A building constructed in accordance with an approval under the Act may be compatible with a district, but is not a contributing building unless the Board has determined that it meets the criteria in this section.
- 702.4 The same criteria may be applied to historic landmarks.

703 NON-CONTRIBUTING BUILDINGS, STRUCTURES, AND SITES

- 703.1 The following considerations apply when determining whether a property meets the definition of a non-contributing building, structure, or site:
- (a) A building or structure does not add to a district's sense of time and place and historical development if its qualities of location, design, setting, materials, workmanship, feeling and association have been so altered or are so deteriorated that the integrity of the property is irretrievably lost.
 - (b) A building or structure does not share the historic associations or historic architectural qualities for which a district is significant if it does not date from the district's period of significance, does not relate to its documented significance, or no longer possesses historic integrity due to changes since the period of the significance.
 - (c) An archaeological site does not contribute to the archaeological values for which a district is significant if it postdates the district's period of significance, does not relate to its documented significance, or is no longer capable of yielding important information about the period due to disturbance or other changes.
- 703.2 For districts with a specified period of significance, some buildings or structures may be judged to have achieved significance based on re-evaluation or the passage of time since the district's designation. For districts lacking a specified period of significance, non-contributing buildings shall be identified on a case-by-case basis.
- 703.3 Ordinarily, when considering eligibility for the National Register, buildings that date from the past 50 years do not contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given, or the documented historical attributes of the district are less than 50 years old.
- 703.4 The same criteria may be applied to historic landmarks.

704 APPLICATION FOR CERTIFICATION

- 704.1 An application for certification of a property as contributing to the character of a historic district or landmark shall be made only by the owner of the property or the owner's authorized agent.
- 704.2 A request for certification shall be initiated by the filing of an application in the form and number as the staff may prescribe. The application shall at a minimum state the address of the property and the purpose for which the request is made, and shall include a photograph or photographs clearly showing the current condition of the property and its setting. The staff may request additional information as may be reasonably

necessary for making a determination.

- 704.3 The filing of an application for a demolition permit shall be considered to incorporate a request for a determination whether the property contributes to the character of a historic landmark or district.

705 CERTIFICATION OF BUILDINGS PROPOSED FOR DEMOLITION

- 705.1 Upon receipt of an application to demolish a building or structure that the Board determined to be non-contributing when it designated the historic district, the staff may certify the building as non-contributing on behalf of the Board and may process the demolition permit accordingly.
- 705.2 Upon receipt of an application to demolish a building or structure that the Board determined to be contributing when it designated the historic district, or the staff has determined to be contributing by applying the criteria in this chapter, or in any other case the staff deems appropriate, the staff shall refer the case to the Board with a recommendation for the Board's final determination in conjunction with the demolition permit application.

CHAPTER 8 CERTIFICATION OF REHABILITATION [RESERVED]

CHAPTER 9 INSPECTIONS AND ENFORCEMENT [RESERVED]

CHAPTER 10 MAINTENANCE OF HISTORIC PROPERTY [RESERVED]

CHAPTER 11 UNSAFE AND INSANITARY BUILDINGS [RESERVED]

CHAPTER 12 DUE PROCESS DEMOLITION [RESERVED]

CHAPTER 13 STATE HISTORIC PRESERVATION OFFICER FUNCTIONS [RESERVED]

CHAPTER 14 STATE REVIEW BOARD FUNCTIONS [RESERVED]

CHAPTERS 15-19 [RESERVED]

CHAPTER 20 DESIGN AND CONSTRUCTION STANDARDS AND GUIDELINES

Secs.	
2000	General Provisions
2001	Purpose and Use
2002	Compatibility and Consistency with the Purposes of the Historic Protection Act
2003	Secretary of the Interior's Standards for Rehabilitation
2004	Historic Preservation Guidelines

2000 GENERAL PROVISIONS

- 2000.1 The Board shall establish standards and guidelines to assist it and the staff in making determinations whether proposed work is compatible with the character of historic properties. The standards and guidelines shall enunciate the Board's policy with respect to various types of work, and shall indicate what types of work are considered to constitute appropriate treatments or adaptations of historic properties.
- 2000.2 Work undertaken in conformity with the Board's standards and guidelines shall be considered consistent with the purposes of the Historic Protection Act.
- 2000.3 Standards and guidelines shall be developed through a process that provides an opportunity for public review and comment. Any standards shall be promulgated as part of these regulations.
- 2000.4 In addition to its own specific standards and guidelines, the Board shall apply commonly accepted standards of historic preservation practice.
- 2000.5 The following terms specifically applicable to this chapter are defined in Chapter 99:
- (a) Standards or Board's standards;
 - (b) Guidelines or Board's guidelines;
 - (c) Adapt and adaptation;
 - (d) Compatible;
 - (e) Incompatible;
 - (f) Rehabilitation; and
 - (g) Restoration.

2001 PURPOSE AND USE

- 2001.1 The Board's design and construction standards are intended to promote the clear understanding and use of responsible historic preservation methods and practices. They

are not intended as rigid and unyielding rules for all situations, but rather as a general means of promoting equity of treatment among applicants and consistency to the directions given by the Board and staff.

- 2001.2 The Board's standards shall be used with discretion, considering the context in which they are applied. Their application shall involve a careful assessment of the characteristics of affected historic properties, the nature of the proposed project, and other practical considerations.
- (a) Pertinent considerations about the historic property include its relative importance, nature of significance, condition, and degree of material integrity.
 - (b) Pertinent conditions about the project include the extent of its impact, its degree of reversibility, allowable development rights, and related practical or regulatory constraints.
 - (c) Pertinent considerations about the relationship of a project to a historic district include its compatibility with its immediate context and not merely its consistency with conditions found elsewhere in the historic district.
- 2001.3 The burden shall be on an applicant to show that an exception to the normal rule in the Board's standards is appropriate.

2002 COMPATIBILITY AND CONSISTENCY WITH THE PURPOSES OF THE HISTORIC PROTECTION ACT

- 2002.1 The Board shall review an application for demolition, alteration, or subdivision to advise the Mayor's Agent whether the work is compatible with the purposes of the Historic Protection Act.
- 2002.2 The Mayor's Agent may approve an application as necessary in the public interest because it is consistent with the purposes of the Act.
- 2002.3 The purposes of the Act are, with respect to historic landmarks:
- (a) To retain and enhance historic landmarks and to encourage their adaptation for current use; and
 - (b) To encourage the restoration of historic landmarks.
- 2002.4 The purposes of the Historic Protection Act are, with respect to historic districts:
- (a) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
 - (b) To assure that alterations of existing structures are compatible with the character

of the historic district; and

- (c) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.

2003 SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 2003.1 The Secretary of the Interior's Standards for Rehabilitation are the most commonly accepted national standards of good preservation practice. They are used by all federal agencies and SHPOs, and have been adopted by historic district and planning commissions across the country.
- 2003.2 The Board, the SHPO, and the staff apply the Secretary's Standards in all project reviews under the federal preservation program, including Section 106 cases and projects seeking certified rehabilitation status for federal tax purposes.
- 2003.3 The Board and the staff may also apply the Secretary's Standards in the review of projects under the Historic Protection Act. Rehabilitation that meets the Secretary's Standards shall be considered compatible with the character of a historic landmark or historic district. Although conformity is encouraged, rehabilitation is not required to meet the Secretary's Standards to be considered compatible or consistent with the purposes of the Act.
- 2003.4 The Secretary's Standards are:
 - (a) *Standard 1:* A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
 - (b) *Standard 2:* The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
 - (c) *Standard 3:* Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
 - (d) *Standard 4:* Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
 - (e) *Standard 5:* Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
 - (f) *Standard 6:* Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature,

the new feature shall match the old in design, color, texture, and other visual qualities, and where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

- (g) *Standard 7:* Chemical or physical treatments, such as sandblasting, that cause damage to historic material shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (h) *Standard 8:* Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (i) *Standard 9:* New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.
- (j) *Standard 10:* New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2003.5 The Secretary's Standards are accompanied by Guidelines for Rehabilitating Historic Buildings, which are intended to assist in applying the Standards to projects generally. The Standards and Guidelines are published by the National Park Service, U.S. Department of the Interior, and are available from the U.S. Government Printing Office. The HPO shall also make copies available for review by the public at the HPO office.

2004 HISTORIC PRESERVATION GUIDELINES

- 2004.1 To promote the clarity and understanding of design and construction standards, the Board and HPO may prepare design guidelines for use in conjunction with the standards. The Board's design guidelines shall augment the standards and provide examples of treatments that are recommended or not recommended.
- 2004.2 Before the implementation of any design guidelines, the HPO shall submit the proposed guidelines to the Board for its review and acceptance. The Board shall adopt design guidelines only after distribution of the proposed guidelines to the public for review and comment, and a duly noticed public hearing at which the public may participate.
- 2004.3 The HPO may make minor changes to adopted guidelines without a public hearing by the Board.

CHAPTER 21 STANDARDS FOR RENOVATION [RESERVED]

CHAPTER 22 STANDARDS FOR ADDITIONS AND NEW CONSTRUCTION
[RESERVED]

**CHAPTER 23 STANDARDS FOR WINDOW REPAIR AND REPLACEMENT
(WINDOW STANDARDS)**

Secs.	
2300	General Provisions
2301	Window Types
2302	Window Components and Attributes
2303	Window Maintenance and Repair
2304	Storm Windows
2305	Window Replacement: General Provisions
2306	Window Replacement: Historic Landmarks
2307	Window Replacement: Contributing Buildings in Historic Districts (Major Buildings)
2308	Window Replacement: Contributing Buildings in Historic Districts (Small Buildings)
2309	Window Replacement: Contributing Buildings in Historic Districts (Large Buildings)
2310	Window Replacement: Non-Contributing Buildings in Historic Districts
2311	Windows in New Additions to Historic Buildings
2312	Windows in New Construction in Historic Districts
2313	Supplemental Information for Permit Applications

2300 GENERAL PROVISIONS

- 2300.1 Windows are an important and integral part of the design of most buildings. They typically comprise thirty to forty percent of the surface area of the building's principal façade. In making a determination on proposed changes to windows, the Board and staff evaluate the effect of the proposal on the aesthetic values and the historical and architectural significance of the affected historic building. Factors in this evaluation include the architectural style and integrity of the historic building, and the design, material, color, and general appearance of the proposed work.
- 2300.2 These window standards are based on the following principles:
- (a) The historic character of a property and its distinguishing qualities shall be retained and preserved. The removal of historic materials or alteration of distinctive architectural features should be avoided.
 - (b) Deteriorated architectural features should be repaired rather than replaced.
 - (c) In the event that replacement is necessary, the new feature should match the historic in design, color, texture, and other visual qualities, and, where possible, materials.
- 2300.3 To the maximum extent possible, these standards shall be applied so as to minimize harm to National Historic Landmarks and National Historic Landmark Districts.
- 2300.4 The following terms specifically applicable to this chapter are defined in Chapter 99:
- (a) Façade;
 - (b) Principal façade;

- (c) Secondary elevation; and
- (d) Character-defining feature.

2301 WINDOW TYPES

- 2301.1 An "existing window" means a windows existing at the time of designation, if supported by documentary evidence, or a window that has been changed subsequent to designation pursuant to a valid permit reviewed by the Board.
- 2301.2 A "historic window" means:
- (a) A window that appears to date from the construction of the historic building, as determined with a reasonable degree of certainty by professional evaluation;
 - (b) A window that is of a type characteristic of the building when constructed, as supported by documentary evidence which may include typologies of similar buildings in similar periods and styles; or
 - (c) A window that was incorporated into the building by a major alteration undertaken within the period of significance of the historic landmark or district, as supported by documentary evidence.
- 2301.3 A "special window" means a window that creates a special architectural effect, or is a custom design, not typically found in a manufacturer's catalogue. These windows may or may not be repetitive, and usually involve one or more of the following attributes:
- (a) Non-rectilinear frame or sash;
 - (b) Transom or side light configuration;
 - (c) Multi-pane configuration with twelve or more panes in a single sash;
 - (d) Curved glass;
 - (e) Stained, leaded, or artistically crafted glazing;
 - (f) Decorated, carved, or embellished sash, frame, or surround; or
 - (g) Projecting bay or oriel.

2302 WINDOW COMPONENTS AND ATTRIBUTES

- 2302.1 "Configuration" means the number, shape, organization and relationship of panes or lights of glass, as defined by sash, frame, muntins, or tracery

- 2302.2 "Dimensions" means the size and measurements of both stationary and moveable portions of a window and its applied moldings.
- 2302.3 "Fenestration" means the way in which windows are arranged in a façade, including configuration, profile, material, and finish.
- 2302.4 "Finish" means the visual characteristics, including color, texture and reflectivity of all exterior materials. A replacement window does not match the finish of a wood window if it is clad with metal or vinyl.
- 2302.5 "Frame" means the stationary portion of a window unit, which is affixed to the façade and which holds the sash or other operable portions of the window.
- 2302.6 "Glazing" means the glass or other material forming the transparent portion of the window, often in a configuration of separate pieces referred to as panes or lights.
- 2302.7 "Match" means a closely approximate, but not necessarily an exact, replication. Tolerances permitted in determining the acceptable level of approximation shall in general be in fractions of inches. In making this determination, the staff considers overall sizes of window openings and proportions of elements making up the window. In all cases, there shall be minimum variation in the distance between the plane of glass and the plane of adjacent exterior surfaces (muntins, sash and frame).
- 2302.8 "Meeting rail" means the horizontal portion of sash in a double hung window designed to interlock with the other sash member, usually at the middle of the window.
- 2302.9 "Method of operation" means the manner in which a window opens, closes, locks, or functions. If non-operable, a window or window element, such as a sidelight, is identified as "fixed."
- 2302.10 "Molding" means a trim piece which introduces varieties of outline or contour in edges or surfaces of window elements such as jambs and heads. Moldings are generally rectilinear, curved, or a composite of curves.
- 2302.11 "Mullion" means a vertical primary framing member which separates paired or multiple windows within a single opening.
- 2302.12 "Muntin" means a tertiary framing member which subdivides window sash into individual panes, lights or panels. For the purposes of these standards, the term includes lead comes associated with stained glass windows. False muntins or "grids" placed between two sheets of glass are not considered muntins.
- 2302.13 "Panning" (also known as "capping" or "wrapping") means a material, usually metal or vinyl, applied to cover the exterior surface of an existing window frame or mullion.
- 2302.14 "Profile" means the three-dimensional appearance of a window, particularly as

perceived under the conditions of sunlight and shadow. Profile is established by the contours of frame and sash elements, and by the successive depth of recess of the window within the opening, the sash within the frame, and the glass within the sash.

- 2302.15 "Sash" means the secondary part of a window, either operable or fixed, which holds the glazing in place. Sash is usually constructed of horizontal rails and vertical stiles, and it may be subdivided with muntins.

2303 WINDOW MAINTENANCE AND REPAIR

- 2303.1 Proper maintenance and repair of historic windows is the most appropriate historic preservation approach, since it promotes the long-term preservation of the physical fabric, historic integrity, and appearance of historic buildings and districts. Historic windows should be repaired where possible.
- 2303.2 A permit is not required to undertake the following maintenance work:
- (a) Replacement of broken glass, together with associated replacement of glazing compound and, if necessary, of damaged moldings and muntins with material of matching characteristics.
 - (b) Scraping, priming and repainting of window sash or frames.
 - (c) Caulking around frames and sill.
 - (d) Repair and replacement of window hardware, including pulley chains.
 - (e) Installation of weather-stripping.
 - (f) Rebuilding portions of sills, sash, molding, and other window members, using the same material and to the same configuration, size, shape, and profile.
 - (g) Consolidating wood members with epoxy or other wood fillers.
- 2303.3 A permit is required for repair work that involves any change in configuration, shape, size or profile of any component of the total window assembly, or any change in the type of material used for replacement work, or in wholesale replacement of any window element.

2304 STORM WINDOWS

- 2304.1 The use of secondary windows or storm windows, either exterior or interior, is encouraged as a means of preserving historic windows. Under the D.C. Construction Code (12 DCMR § 111), a permit is required for the installation of storm windows in historic landmarks or in historic districts.

2304.2 Interior Storm Windows

- (a) Storm panels should have no intermediate dividing members (mullions or muntins), except on large windows, where any necessary dividing members should align with major divisions of the historic window.
- (b) Frames should be narrow and not visible or minimally visible when viewed from the exterior of the building.
- (c) Glazing should be only of clear glass or other transparent material.

2304.3 Exterior Storm Windows

- (a) Sash should fit tightly within window openings without the need for a subframe or panning around the perimeter.
- (b) Sash should have no intermediate dividing members (mullions or muntins), except on large windows, where any necessary dividing members should align with major divisions of the historic window.
- (c) Meeting rails should be used only in conjunction with double-hung windows and should be in the same relative location as in the primary sash.
- (d) The color of the frame members should approximate the color of the primary window frame.
- (e) Glazing should be only of clear glass.
- (f) The plane of glass in the secondary (storm) sash shall be no more than two (2) inches further forward (towards the exterior) from the plane of the glass in the primary window unless unusual conditions make this infeasible.

2305 WINDOW REPLACEMENT: GENERAL PROVISIONS

- 2305.1 Replacement of historic windows should be considered only if the preferred option of preserving historic windows is not feasible, given the facts and circumstances of each particular case.
- 2305.2 Under the D.C. Construction Code (12 DCMR § 107), a permit is required for the replacement of windows in historic landmarks or buildings within an historic district.
- 2305.3 The requirement for a permit applies equally to the removal or replacement of sash in existing frames, and to the removal or replacement of both sash and frames. If repair or rehabilitation of frames is proposed, that work shall also be indicated on the permit application.

- 2305.4 Replacement sash and frames shall match the historic sash and frames in all respects—configuration, method of operation, profile, dimensions, material, finish, and any other salient character-defining features, except as provided below.
- 2305.5 Panning, capping, or wrapping of window piers, mullions, frames, and sills is generally discouraged.
- 2305.6 Replacement windows may be double-glazed, but they shall have either “true-divided” lights, or “simulated-divided” lights (integrally applied external and internal muntins), with configuration and profiles matching the historic window. False muntins or “grids” located between two panes of glass, and “snap-ins” applied either internally or externally are not considered acceptable muntins.
- 2305.7 Glazing in replacement windows shall be clear, non-reflective glass unless otherwise historically appropriate or determined compatible by the staff. Replacement of stained or specialty glass shall match the historic glass or be historically appropriate or compatible.
- 2305.8 Permanent exterior full screens covering the entire window opening detract from the historic appearance of windows and are discouraged. Half screens or internal screens are preferred.
- 2305.9 The standards for window replacement reflect a hierarchy of building importance, as delineated in the following sections. The strictest standard shall be applied to National Historic Landmarks, historic landmarks and major buildings in historic districts, a more flexible standard shall be applied to contributing buildings in historic districts (with additional flexibility applied to larger buildings), and the most flexible standard shall be applied to non-contributing buildings and new construction.
- 2305.10 If the existing windows in an historic building are not historic windows, replacement windows should be consistent with the historic window design if known, or should be consistent with the period of the building and compatible with its general historic character.

2306 WINDOW REPLACEMENT: HISTORIC LANDMARKS

2306.1 Principal Facades

- (a) If historic windows cannot reasonably be restored, replacement windows shall be approved if they match the historic windows in all respects—configuration, method of operation, profile, dimensions, material, finish, and any other salient character-defining features. A stricter standard of reasonableness shall be applied to special windows.

- (b) Variations in profile shall be permitted if these variations do not significantly affect visual characteristics of the historic window. In evaluating "significant" effect, factors to be considered shall be the age of the building, its architectural quality, and the extent of diminution in the total glazed area of the sash. Exact replication of profiles may be required if warranted by the significance of the historic building,
- (c) The color of replacement windows shall match or approximate the historic color of the historic windows, if this can be determined. Otherwise, the color shall be historically appropriate.
- (d) With respect to matching of materials, it shall be understood that a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal. Exact replication of materials may be required if warranted by the significance of the historic building.
- (e) Replacement of windows in a different material shall require approval by the Board.
- (f) Alteration of window openings shall generally require approval by the Board. For basement openings not visible from a street or public open space, or only marginally visible, the staff may approve alterations that do not compromise historic or architectural characteristics.

2306.2 Secondary Elevations

- (a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows match the historic windows in terms of configuration, method of operation, profile, dimensions, and finish, and provided that they do not replace special windows. Matching the material is encouraged but not required.
- (b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation and dimensions, and provided that they do not replace special windows.
- (c) Alteration of window openings is discouraged, but some flexibility may be applied.

2307 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (MAJOR BUILDINGS)

- 2307.1 For the purposes of these standards, a "major building" in a historic district is a contributing building that is individually distinguished by characteristics like symbolic

value, visual prominence, substantial size, architectural elaboration, or historical association. These buildings often meet the criteria for historic landmark designation, and typically include public and institutional buildings, schools, mansions, and places of worship or public assembly.

- 2307.2 Major buildings in historic districts shall be treated on a case-by-case basis, usually according to the same standards applicable to historic landmarks.

2308 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (SMALL BUILDINGS)

- 2308.1 For the purposes of these standards, a "small building" in a historic district shall be defined as a building of four stories or less, unless the building has a street frontage of one hundred (100) feet or more on any single street.

2308.2 Principal Facades

- (a) If historic windows cannot reasonably be restored, replacement windows shall be approved if they reasonably match the historic windows in all respects—configuration, method of operation, profile, dimensions, material, and finish. A stricter standard of reasonableness shall be applied to special windows.
- (b) Variations in profile shall be permitted if these variations do not significantly affect visual characteristics of the historic window. In evaluating "significant" effect, factors to be considered shall be the age of the building, its architectural quality, and the extent of diminution in the total glazed area of the sash. Exact replication of profiles may be required if warranted by the significance of the historic building.
- (c) With respect to matching of materials, it shall be understood that a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal. Exact replication of materials may be required if warranted by the significance of the building.
- (d) The color of replacement windows should be historically appropriate or compatible with the character of the building.
- (e) In buildings other than one- or two-family dwellings, where the historic windows are simple one-over-one, straight-headed, double hung sash with non-contoured and unornamented frames, flexibility may be applied to allow replacement in a different material.
- (f) Alteration of window openings shall generally require approval by the Board. For basement openings not visible from a street or public open space, or only

marginally visible, the staff may approve alterations that do not compromise historic or architectural characteristics.

2308.3 Secondary Elevations

- (a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation, profile, and dimensions, and provided that they do not replace special windows. Matching the material and finish is encouraged but not required.
- (b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of method of operation and dimensions, and provided that they do not replace special windows. Flexibility is allowed in the choice of configuration, profile, material, and finish.
- (c) Alteration of window openings is discouraged, but some flexibility may be applied.

2309 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (LARGE BUILDINGS)

2309.1 For the purposes of these standards, a "large building" in a historic district shall be defined as a building of five (5) or more stories in height, or a building of less than five (5) stories with a street frontage of one hundred (100) feet or more on any single frontage.

2309.2 Principal Facades

- (a) Replacement windows shall be approved if they match the historic windows in terms of configuration, operation, profile, dimensions, and finish. However, matching the material is encouraged and may be required if deemed appropriate by the staff.
- (b) Where the historic windows possess special architectural value, including special windows, replacement windows shall match the material of the historic windows. Special architectural value often applies to large buildings with ground floor or lower floor windows that are distinctively different from the typical upper floor windows. In these cases, the staff may deem it appropriate to require matching the material on the lower windows (or to require retention of the original lower windows), while allowing replacement in a different material for the upper windows.
- (c) Alteration of window openings shall generally require approval by the Board. For basement openings not visible from a street or public open space, or only

marginally visible, the staff may approve alterations that do not compromise historic or architectural characteristics.

2309.3 Secondary Elevations

- (a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation, profile, and dimensions, and provided that they do not replace special windows. Matching the material and finish is encouraged but not required.
- (b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of method of operation and dimensions, and provided that they do not replace special windows. Flexibility is allowed in the choice of configuration, method of operation, profile, material, and finish.
- (c) Alteration of window openings is discouraged, but some flexibility may be applied.

2310 WINDOW REPLACEMENT: NON-CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS

2310.1 For replacement windows in a non-contributing building within an historic district, a permit shall be issued if the windows are appropriate for the building and compatible with the historic district.

2310.2 This guidance is intended to promote design compatibility with historic districts, rather than to discourage good contemporary design or creative architectural expression.

2311 WINDOWS IN NEW ADDITIONS TO HISTORIC BUILDINGS

2311.1 Windows in additions to historic buildings should be appropriate for the new addition and in most cases consistent in overall character with the windows found on the historic building. This is generally most important for windows in close proximity to a primary historic façade.

2311.2 Windows in rear additions to historic buildings should generally reflect the less formal design that is characteristic at the rear of most historic structures. Alternatively, windows in an addition distinguished by deliberate contrast should be compatible in scale and character with the historic building overall.

2311.3 Windows should generally be made of the same material as the building's historic windows, particularly in additions to historic landmarks, major buildings in historic districts, and small buildings in historic districts. Alternatively, use of a different

window material should serve to support the design integrity of an addition distinguished by contrast.

- 2311.4 This guidance is intended to promote design compatibility with historic buildings and districts, rather than to discourage good contemporary design or creative architectural expression.

2312 WINDOWS IN NEW CONSTRUCTION IN HISTORIC DISTRICTS

- 2312.1 Windows in new construction within an historic district should be appropriate for the building and in most cases generally consistent in character with the windows found in the historic district.
- 2312.2 Windows should generally be made of the materials characteristic of similar building types within the historic district.
- 2312.3 This guidance is intended to promote design compatibility with historic buildings and districts, rather than to discourage good contemporary design or creative architectural expression.

2313 SUPPLEMENTAL INFORMATION FOR WINDOW PERMIT APPLICATIONS

- 2313.1 Permit applications for window work shall include close-up photographs of existing windows in the building or other materials adequate to document the condition of existing windows.
- 2313.2 For applications to replace windows, supplemental materials shall include documentation sufficient to indicate the design and construction of the proposed new windows, such as drawings from the manufacturer's catalogue or other drawings with comparative dimensions, details of construction, configuration, color and finish.
- 2313.3 If necessary, the staff may request material samples or an on-site mock-up.

CHAPTER 24 STANDARDS FOR COMMERCIAL STOREFRONTS [RESERVED]

CHAPTER 25 —STANDARDS FOR SIGNS AND AWNINGS [RESERVED]

CHAPTER 26 STANDARDS FOR LANDSCAPE FEATURES [RESERVED]

CHAPTER 30 MAYOR'S AGENT PUBLIC HEARING PROCEDURES

Secs.	
3000	General Provisions
3001	Appearance and Representation
3002	Status of Parties and Persons
3003	Duties of the Mayor's Agent
3004	Order of Procedure
3005	Witnesses and Evidence
3006	Conclusion of the Hearing
3007	Service of Papers
3008	<i>Ex Parte</i> Communication

3000 GENERAL PROVISIONS

- 3000.1 Public hearings by the Mayor's Agent shall be conducted according to the contested case procedures of the Administrative Procedure Act (D.C. Official Code § 2-509).
- 3000.2 The following terms specifically applicable to this chapter are defined in Chapter 99:
- (a) Applicant;
 - (b) Party;
 - (c) Person;
 - (d) Affected person; and
 - (e) Affected Advisory Neighborhood Commission.

3001 APPEARANCE AND REPRESENTATION

- 3001.1 In any proceeding before the Mayor's Agent, the following shall apply:
- (a) Any person or party may appear personally or through counsel;
 - (b) A partner of a partnership may represent the partnership;
 - (c) An officer or official of a corporation or association may represent the corporation or association if properly authorized to do so by the articles of incorporation, bylaws, or board of directors of the corporation or association;
 - (d) The Chairperson, counsel, or an authorized member of the Historic Preservation Review Board may represent the Board;
 - (e) An officer or employee of a public agency or government unit or department may represent that agency, unit, or department; and

- (f) One or more duly authorized members or staff persons of an Advisory Neighborhood Commission (ANC) may represent the ANC.

3001.2 Any person or party appearing before the Mayor's Agent other than on his or her own behalf shall establish his or her authority to act in that capacity.

3002 STATUS OF PARTIES AND PERSONS

3002.1 The Mayor's Agent shall determine who will be recognized as a party at a public hearing.

3002.2 Any individual or organization not recognized as a party to a public hearing may participate as a person under these rules.

3003 DUTIES OF THE MAYOR'S AGENT

3003.1 The Mayor's Agent shall be the presiding officer at the public hearing.

3003.2 As presiding officer, the Mayor's Agent shall have authority to perform the following duties:

- (a) Regulate the course of the hearing;
- (b) Dispose of procedural requests or similar matters, including motions to amend, to order proceedings reopened, or to consolidate applications for review;
- (c) Request any party or person at any time during the hearing to state his or her respective position concerning any issues in the proceeding and theory in support of that position;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Assign exhibit numbers for all written documentary and other tangible matter offered in evidence;
- (f) Call, examine, and cross-examine witnesses and introduce into the record documentary or other evidence;
- (g) Rule upon the qualifications of witnesses offered as experts;
- (h) Establish reasonable time limits for witnesses and fairly allocate time among the parties and others;
- (i) Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;

- (j) Adjourn a hearing and establish the date when the hearing will be continued;
- (k) Close a hearing;
- (l) Require the parties to submit proposed findings of fact and conclusion of law; and
- (m) Take any other action authorized or necessary under this chapter.

3004 ORDER OF PROCEDURE

3004.1 The order of procedure for the public hearing shall be as follows, unless the Mayor's Agent determines otherwise for good cause:

- (a) Introductory statement by the presiding officer;
- (b) Consideration of pending motions and procedural matters;
- (c) Swearing of witnesses;
- (d) Presentation of the applicant's case;
- (e) Officially adopted reports or statements by the Historic Preservation Review Board;
- (f) Reports or statements by public agency representatives;
- (g) Statements by affected Advisory Neighborhood Commission(s);
- (h) Statements by parties in support of the application;
- (i) Statements by persons in support of the application;
- (j) Statements by parties in opposition to the application;
- (k) Statements by persons in opposition to the application;
- (l) Rebuttal by the applicant;
- (m) Rebuttal by parties in support of the application; and
- (n) Surrebuttal by parties in opposition to the application.

3004.2 The public hearing may be adjourned from time to time. If the time and place of the resumption is publicly announced when the adjournment occurs, further notice of the adjourned hearing is not required.

3005 WITNESSES AND EVIDENCE

- 3005.1 Any party or person may appear as a witness and offer evidence at the public hearing.
- 3005.2 Witnesses shall testify orally under oath or affirmation.
- 3005.3 Witnesses may be cross-examined by any other party.
- 3005.4 Evidence shall be taken in conformity with the Administrative Procedure Act (D.C. Official Code § 2-509 (b)).
- 3005.5 Exhibits may be offered in evidence at the public hearing. Exhibits may be in the form of photographs, models, architectural plans, graphs, or the like.
- 3005.6 Copies of exhibits shall be submitted for the record, either at the hearing or before closure of the record. If models are used at the hearing, photographs of the models not exceeding letter size shall be supplied.
- 3005.7 No material shall be submitted for the record which exceeds standard letter size of 8½ by 11 inches, or cannot be folded to letter size.
- 3200.1 The provisions of the Historic Protection Act and these regulations are considered part of every proceeding before the Mayor's Agent and it is not necessary for any party or person to move their introduction into evidence.

3006 CONCLUSION OF THE HEARING

- 3006.1 The applicant and any party may submit proposed findings of fact and conclusions of law within the time directed by the Mayor's Agent, and the Mayor's Agent may request the parties to submit proposed findings and conclusions.
- 3006.2 Copies of proposed findings and conclusions shall be served by each party upon all other parties.
- 3006.3 The record shall be closed following the public hearing, unless the Mayor's Agent directs that the record be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs.
- 3006.4 If warranted by the nature of the case, the Mayor's Agent may issue a bench decision at the conclusion of the public hearing, based on the written record and the evidence and testimony presented at the hearing. The Mayor's Agent may also issue an immediate written order based on proposed findings of fact and conclusions of law submitted by the applicant.

3007 SERVICE OF PAPERS

- 3007.1 Any paper required to be served upon a party shall be served upon the party or upon the representative designated by the party or by law to receive service of papers. When a party has appeared by attorney or other representative, service shall be made upon the attorney or representative of record.
- 3007.2 Service may be made by personal or overnight delivery, U.S. mail, facsimile, electronic mail, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Mayor's Agent may make special provisions at the proceeding regarding the service of papers.
- 3007.3 Service by personal delivery upon a party is complete on handing the paper to the person, or leaving it at the person's office with a clerk or other person in charge, or if there is no one in charge, leaving it in a conspicuous place in that office. If the office is closed or the person to be served has no office, service is complete by leaving the paper at the person's usual place of residence with a resident or employee of suitable age and discretion.
- 3007.4 Service by mail upon a party is complete on deposit in the United States mail, properly stamped and addressed.
- 3007.5 Service by overnight delivery is complete on deposit with the delivery company, properly addressed and with the charges prepaid.
- 3007.6 Service by facsimile is complete when telecopied with the proper telephone number of the intended recipient's telecopier.
- 3007.7 Service by electronic mail is complete when transmitted electronically, properly addressed to the attention of the intended recipient, with proper e-mail address.
- 3007.8 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by any of the following ways:
- (a) Written acknowledgement of the party served or the party's attorney of record;
 - (b) The certificate of the attorney of record if the attorney has made the service; or
 - (c) The certificate of the person making the service.

3008 EX PARTE COMMUNICATION

- 3008.1 In any contested case proceeding by the Mayor's Agent, all parties shall be prohibited from receiving or participating in any *ex parte* communication with the Mayor's Agent

relevant to the merits of the proceeding. This shall include any oral or written communication not in the public hearing record with respect to which reasonable prior notice is not given to all parties to the proceeding.

- 3008.2 This prohibition shall begin upon the referral of the application to the Mayor's Agent and shall not terminate until the final disposition of the case.
- 3008.3 This prohibition shall not extend to communication between the Mayor's Agent and the staff concerning matters relating to administration of the hearing or matters of record.

CHAPTER 31 HISTORIC PRESERVATION REVIEW BOARD MEETING AND HEARING PROCEDURES

Secs.	
3100	General Provisions
3101	Appearance and Representation
3102	Duties of the Chairperson
3103	Order of Proceedings
3104	Quorum and Voting Procedures
3105	Duties of Board Members
3106	Conflict of Interest

3100 GENERAL PROVISIONS

- 3100.1 The Board's hearings and meetings are rulemaking proceedings and shall be conducted in accordance with D.C. Official Code § 2-505.
- 3100.2 The Board shall hold a regularly scheduled monthly meeting, except that the Board may decide not to schedule a hearing in August or for other good cause. In addition to the regularly scheduled monthly meeting, the Chairperson may call additional meetings or hearings as needed for the conduct of business.
- 3100.3 The proposed agenda and staff reports for each meeting or hearing shall be posted in the Historic Preservation Office and made available to the public at least five (5) days before the meeting or hearing.
- 3100.4 Copies of the agenda shall be available to the public at the meeting or hearing. Notwithstanding the prepared agenda, the Board is not precluded from amending or reordering the agenda at the meeting or hearing to promote the public interest or efficient administration of the Historic Protection Act.
- 3100.5 Board proceedings may be adjourned from time to time. If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.

3101 APPEARANCE AND REPRESENTATION

- 3101.1 Any applicant, government representative, or person may appear and offer statements and exhibits in any proceeding before the Board, or may submit written materials for consideration by the Board.
- 3101.2 An individual may appear on his or her own behalf or on behalf of any other person, when authorized by that person.
- 3101.3 An individual need not be a member of the bar of any court to appear before the Board in a representative capacity.

- 3101.4 Any individual appearing before the Board other than on his or her own behalf shall establish his or her authority to act in a representative capacity.

3102 DUTIES OF THE CHAIRPERSON

- 3102.1 The Chairperson of the Board shall be the presiding officer at all hearings and meetings. The presiding officer shall have authority to do the following:
- (a) Regulate the course of the proceedings;
 - (b) Dispose of procedural requests or similar matters;
 - (c) Determine if the materials supplied to the Board are of sufficient detail and clarity to permit a Board decision;
 - (d) Call, qualify, and question persons at a hearing, receive relevant information, and introduce into the record documentary or other material;
 - (e) Request any applicant or person at any time during a proceeding to state his or her respective position concerning any issues in the proceeding and theory in support thereof;
 - (f) Adjourn a proceeding and establish the date when it will be continued;
 - (g) Close a proceeding;
 - (h) Establish reasonable time limits for comments and fairly allocate time among the applicant, interested persons, and others;
 - (i) Exclude unduly repetitious or irrelevant comments or presentations, and permit a person to adopt the prior statement of another person; and
 - (j) Take any other action authorized by these rules or necessary under these rules for the proper, expeditious, and fair conduct of the hearing or meeting.

3103 ORDER OF PROCEEDING

- 3103.1 The order of proceeding at a historic landmark or historic district designation hearing shall be as follows, unless the Chairperson determines otherwise for good cause:
- (a) Introductory statement by the Chairperson;
 - (b) Statement by the applicant;
 - (c) Staff report;

- (d) Statement by the owner, if not the applicant (when a historic landmark is proposed);
- (e) Reports or statements by public agencies;
- (f) Statements by affected Advisory Neighborhood Commissions;
- (g) Statements by persons in support of the application;
- (h) Statements by persons in opposition;
- (i) Response by the owner, if any (when a historic landmark is proposed); and
- (j) Discussion and determination by the Board.

3103.2 The order of proceeding at a meeting to consider permit and other applications shall be as follows, subject to the Chairperson's discretion:

- (a) Staff presentation;
- (b) Applicant's presentation;
- (c) Reports or statements by public agencies;
- (d) Statements by affected Advisory Neighborhood Commissions;
- (e) Statements by persons in support of the application;
- (f) Statements by persons in opposition; and
- (g) Discussion and determination by the Board.

3103.3 The Board may ask questions of any person or seek clarification of any statement at any time during a proceeding.

3104 QUORUM AND VOTING PROCEDURES

3104.1 A majority of the duly constituted Board shall constitute a quorum for the purpose of conducting business at a public hearing or meeting pursuant to these regulations.

3104.2 If the Board loses a quorum during the course of a meeting, unless otherwise prohibited, the Board may at its own discretion proceed to conduct business without a quorum on a case-by-case basis, provided that there is no objection from the applicant or any person interested in the matter under consideration by the Board.

3104.3 Actions of the Board shall be taken in public by a majority vote among the members present and voting, and the vote of each member shall be recorded and noted for inclusion in the transcript or minutes of the meeting.

3104.4 A member may participate and vote on a case even though that member may not have attended prior proceedings in the case, provided that the member has reviewed the complete record in the case.

3105 DUTIES OF BOARD MEMBERS

3105.1 Each Board member shall become knowledgeable regarding the statutes, regulations, standards, and other policies relating to the Board's responsibility and authority.

3105.2 A members shall not participate in making a decision of the Board without becoming familiar with the case pending before the Board, including previous discussions and decisions associated with the matter.

3106 CONFLICT OF INTEREST

3106.1 Board members shall comply with all applicable D.C. rules and regulations on conflict of interest.

3106.2 Any member of the Board shall recuse himself or herself from voting and all other proceedings on any case for which the member has a real or apparent conflict of interest. Upon recusal, the Board member shall leave the meeting or hearing room during the Board's consideration of the case.

CHAPTER 32 GENERAL ADMINISTRATIVE PROCEDURES

Secs.	
3200	General Provisions
3201	Public Hearings and Meetings
3202	Public Mailing List
3203	Annual Notices
3204	Minutes and Transcripts
3205	Legal Advice and Representation
3206	Computation of Time
3207	Amendment and Waiver of Rules
3208	Severability

3200 GENERAL PROVISIONS

- 3200.1 All proceedings of the Mayor's Agent and Board shall be conducted in accordance with the Administrative Procedure Act (D.C. Official Code § 2-501 *et seq.*) and other applicable laws and regulations.

3201 PUBLIC HEARINGS AND MEETINGS

- 3201.1 Public hearings and meetings conducted by the Mayor's Agent and Review Board shall be open to the public. All interested persons are invited to participate.
- 3201.2 At a public hearing or meeting, the Mayor's Agent and Review Board shall accord "great weight" to the properly adopted written recommendations of affected Advisory Neighborhood Commissions in all matters under their consideration and subject to ANC purview.
- 3201.3 Decorum and good order shall be maintained at all times. No person or group shall willfully and knowingly utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct within any building or part of any building owned or under the control of the District of Columbia with the intent to impede, disrupt, or disturb the orderly conduct of a public meeting or hearing pursuant to these regulations, or enter or remain in, during the course of any public meeting or hearing pursuant to this chapter, any area set aside for use by persons other than the general public.

3202 PUBLIC MAILING LIST

- 3202.1 The Board shall maintain a general public mailing list for notice of public meetings, hearings, and other matters. The mailing list shall include the members of the Council of the District of Columbia, all Advisory Neighborhood Commissions, and any historic preservation organization, civic group, or interested person upon request.
- 3202.2 At least every two years, the HPO may purge the mailing list of organizations and persons listed by request, after giving notice indicating the manner in which they should state their desire to remain on the list. The HPO may also routinely purge the

mailing list of any addressees upon receipt of mail returned by the U.S. Postal Service as undeliverable. Anyone purged from the list may request reinstatement at any time.

- 3202.3 The Board may supplement the general public mailing list with an electronic mailing list maintained for the same purposes.

3203 ANNUAL NOTICES

- 3203.1 Near the end of each calendar year, the Board shall publish in the *D.C. Register* a notice of its meeting dates for the upcoming year, also indicating the deadline dates by which applications must be filed before each meeting. The notice may also include supplemental meeting dates as the need arises. This notice shall be available in the HPO office and shall be posted on the HPO website throughout the year.

3204 MINUTES AND TRANSCRIPTS

- 3204.1 Any proceeding before the Mayor's Agent or Board shall be reported under the supervision of the presiding officer, stenographically or by recording or other means, by an official reporter who may be designated for this purpose from time to time.
- 3204.2 The transcript prepared by the reporter shall be the sole official transcript of the hearing.
- 3204.3 Minutes of Review Board proceedings may also be prepared by the staff. Minutes shall be summary in nature and shall include the vote and nature of the action taken on each case.
- 3204.4 Transcripts and minutes are a matter of public record, and shall be open for inspection at the Historic Preservation Office. Copies of the transcript shall be available to any interested person from the official reporter on payment of any applicable copying charge.
- 3204.5 If the transcript and minutes conflict, the wording of the transcript shall prevail.

3205 LEGAL ADVICE AND REPRESENTATION

- 3205.1 The Mayor's Agent, State Historic Preservation Officer, and Review Board may request and receive legal advice from the Office of the Corporation Counsel at any time.
- 3205.2 The Review Board may request and obtain representation by the Office of the Corporation Counsel at any proceeding before the Mayor's Agent.

- 3205.3 The Review Board may request legal assistance from the Office of the Corporation Counsel in any enforcement action or other matter pursuant to these regulations.

3206 COMPUTATION OF TIME

- 3206.1 In computing any period of time specified in this chapter, calendar days shall be counted unless otherwise indicated.
- 3206.2 In computing any period of time specified in this chapter, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless the period ends on a Saturday, Sunday, or holiday, in which case the period runs until the end of the next business day.
- 3206.3 The one hundred twenty (120) day period provided by the Act during which the Mayor must act on an application, shall be computed from the date the Review Board receives the referral of a complete application from DCRA, or for applications subject to review under the Old Georgetown Act or the Shipstead-Luce Act, from the date the CFA receives the referral.
- 3206.4 The provision of a forty-five (45) day notice to Advisory Neighborhood Commissions is intended to address the statutory requirement for a notice period of thirty (30) working days. If there is a discrepancy, the calculation by working days shall control.
- 3206.5 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Mayor's Agent, SHPO or Board, as the case may be.
- 3206.6 Except as otherwise provided by law, failure to take action within a time period specified in these rules shall not invalidate an otherwise proper action pursuant to the rules.

3207 AMENDMENT AND WAIVER OF RULES

- 3207.1 At any time, the Mayor's Agent, State Historic Preservation Officer, or Review Board may amend provisions of these rules pertinent to their respective authorities. Any amendments shall be adopted in accordance with the provisions of the Administrative Procedure Act (D.C. Official Code § 2-505).
- 3207.2 If the duties of an agency or official cited in these rules change pursuant to a governmental reorganization, any affected authorities or responsibilities under these rules shall automatically transfer to the agency or official assuming these duties, without the need for amendment.

3207.3 The Mayor's Agent, SHPO, and Review Board may, for good cause shown, waive any of the provisions of these rules pertaining to their respective authorities, if in their judgment the waiver will not prejudice the rights of any person and is not otherwise prohibited by law.

3208 SEVERABILITY

3208.1 If any section or provision of this subtitle is determined invalid after judicial review, that decision shall not affect the validity of the regulations as a whole, or any part of the regulations other than the part determined to be invalid.

CHAPTER 33 SCHEDULE OF FEES AND FINES [RESERVED]

CHAPTER 99 DEFINITIONS

Secs.	
9900	General Provisions
9901	Defined Terms

9900 GENERAL PROVISIONS

- 9900.1 The definitions in this chapter apply throughout this subtitle.
- 9900.2 Definitions applicable to separate chapters appear in those chapters.
- 9900.3 A word used in this subtitle but not specifically defined in this section, or specifically defined for the purposes of a chapter, has the meaning given in the current edition of *Webster's Unabridged Dictionary*.
- 9900.4 The following rules of interpretation apply throughout this subtitle:
- (a) Words in the present tense include the past and future tense, and variations thereof;
 - (b) Gender-specific words apply to either gender;
 - (c) Words in the singular include the plural, and vice versa; and
 - (d) The word "shall" is mandatory and not discretionary.
- 9900.5 The Mayor's Agent, State Historic Preservation Officer, and Historic Preservation Review Board shall decide any disagreement over interpretation of the definitions applicable to their respective areas of responsibility.

9901 DEFINED TERMS

Act: The Historic Landmark and Historic District Protection Act as defined in this chapter.

Adapt or Adaptation: The process of altering a property to accommodate an intended use, and can involve one or a combination of methods including repair, rehabilitation, restoration, and new construction.

Advisory Neighborhood Commission or ANC: One of the elected citizen advisory bodies established pursuant to the Advisory Neighborhood Commissions Act of 1975, as amended (D.C. Official Code §1-207.38 *et seq.*).

Affected Advisory Neighborhood Commission: The ANC for the area within which a subject property is located, or in the case of a property located in close proximity to

an ANC boundary, either ANC sharing the boundary.

Affected person: In the context of a public hearing by the Mayor's Agent, either of the following:

- (a) Any adjacent or immediately proximate owner or resident who is directly affected by the proposed action, through the possibility of physical damage to historic property, alteration to the character of historic property, or the introduction of visual or environmental elements out of character with historic property.
- (b) Any affected Advisory Neighborhood Commission or historic preservation organization.

Alter or Alteration: A change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required; except that alter or alteration also means a change in any interior space which has been specifically designated as a historic landmark (D.C. Official Code § 6-1102(1)). See also § 301.

Applicant: The person, entity or authorized representative responsible for submission of an application, in any of the following circumstances, as appropriate:

- (a) An applicant for historic landmark or historic district designation pursuant to D.C. Official Code §§ 6-1103;
- (b) An applicant for an alteration, demolition, or new construction permit, or for a subdivision, or for preliminary review pursuant to D.C. Official Code §§ 6-1104 through 1108;
- (c) An applicant for conceptual design review pursuant to these regulations;
- (d) An applicant for the receipt of grant assistance pursuant to these regulations; or
- (e) An applicant for any other certification or official action pursuant to these regulations.

Association: The link of a historic property with a historic event, activity, or person. Also, the quality of integrity through which a historic property is linked to a particular past time and place.

Board: The Historic Preservation Review Board as defined in this chapter.

Board's standards: The design and construction standards described in Chapters 20 through 29.

Board's guidelines: Any design guidelines accompanying the Secretary's Standards,

or adopted by the Board in accordance with § 2004.

Building: A roofed structure for the shelter, support, or enclosure of persons, chattels, or movable property of any kind. As applied to historic buildings, the term may apply to the portion of a structure that historically constituted a separate building.

Character-Defining Feature: The form and detailing of those architectural materials and features that are important in defining a building's historic character and whose retention will preserve that character.

- (a) The character of a historic building may be defined by exterior features such as facades, roofs, porches, and windows, and exterior materials such as masonry, wood, and metal;
- (b) The character of a historic building may be defined by its structural features such as bearing walls, floor framing, and roof framing, and structural materials such as brick, steel, and wood;
- (c) The character of a historic interior may be defined by features such as room configurations, spatial relationships, stairs, trim, and decoration, and by materials such as partitions, woodwork, plaster and finishes;
- (d) The site and setting of a historic property may be defined by features such as views to and from the property, landscaping, walls, and fencing, and materials such as stone and vegetation.

Commission of Fine Arts or CFA: The U.S. Commission of Fine Arts, established pursuant to the Act of May 17, 1910 (36 Stat. 371; 40 U.S.C. 104).

Compatible: Possessing characteristics that allow for a harmonious relationship. Compatibility does not require matching or copying of attributes, and may involve the relation of dissimilar things that are juxtaposed to produce an agreeable effect.

Conceptual Design Review or Conceptual Review: The process that allows an applicant to obtain informal guidance and a finding of general consistency with the purposes of the Act from the Board on a project without the necessity of preparing a finished architectural design or obtaining prior approval from the Zoning Administrator.

Consistent with the purposes of the Act: Consistent with the purposes of the Historic Protection Act as stated in D.C. Official Code § 6-1101(b).

Contributing building, structure, or site: A building, structure, or site located within a historic district that adds to the district's sense of time and place and historical development (see also § 702).

Department of Consumer and Regulatory Affairs or DCRA: The agency

responsible for receiving applications, providing notice of filed applications, and issuing permits and subdivisions pursuant to the Act (D.C. Official Code §§ 6-1104 through 1108), for administering the D.C. Zoning Regulations and Building Codes, and for enforcing public health and safety regulations related to buildings and construction.

Demolish or Demolition: The razing or destruction entirely or in significant part, of a building or structure, and includes the removal or destruction of any façade of a building or structure (D.C. Official Code § 6-1102(3)). See also § 302.

Demolition by neglect: Neglect in maintaining, repairing, or securing a historic landmark or a building or structure in a historic district that results in deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure (D.C. Official Code § 6-1102(3A) (2002 Supp.)).

Design: Either of the following, depending upon the context:

- (a) The sum of elements that create the physical form, plan, space, structure, and style of a property (when used as a quality of integrity); or
- (b) Exterior architectural features including height, appearance, texture, color, and nature of materials (when used in the context of the review of new construction pursuant to the Historic Protection Act, D.C. Official Code § 6-1107).

District of Columbia Inventory of Historic Sites or D.C. Inventory: The inventory of officially designated historic properties subject to the Historic Protection Act, and maintained by the Board in accordance with the Act.

Elevation: The exterior wall of a building or structure (see also “secondary elevation”).

Façade: A building elevation that possesses significant architectural composition or features (see also “principal façade”).

Feeling: The quality of integrity through which a historic property evokes the aesthetic or historic sense of past time and place.

Guidelines or Board’s guidelines: Any design guidelines accompanying the Secretary’s Standards, or adopted by the Board in accordance with § 2004.

Historic building: A historic landmark listed in the D.C. Inventory of Historic Sites, or a contributing building within an historic district listed in the D.C. Inventory of Historic Sites.

Historic district: An area listed as an historic district in the D.C. Inventory, or which the State Historic Preservation Officer has nominated or issued a written determination to nominate to the National Register after a public hearing before the Historic Preservation Review Board.

Historic landmark: A building, structure, object or feature, and its site, or a site:

- (a) Listed in the D.C. Inventory, or
- (b) For which an application for listing is pending with the Historic Preservation Review Board (provided the statutory time period for consideration of the application has not expired).

Historic Landmark and Historic District Protection Act or Historic Protection Act: The Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144, as amended; D.C. Official Code §6-1101 *et seq.*).

Historic Preservation Office or HPO: The administrative staff of the Mayor's Agent, State Historic Preservation Officer, and Historic Preservation Review Board.

Historic preservation organization: A membership organization that includes among its purposes the promotion of historic preservation in the District of Columbia, as expressed in the organization's articles of incorporation, articles of association, charter, or bylaws.

Historic Preservation Review Board, HPRB, Review Board or Board: The District of Columbia Historic Preservation Review Board designated pursuant to the Historic Protection Act (D.C. Official Code § 6-1103) and pursuant to regulations promulgated by the Secretary of the Interior under the National Historic Preservation Act.

Historic property: A historic landmark (and its site), historic district, or a building or structure (and its site) that contributes to the character of a historic district.

Incompatible: Characterized by clashing or conflicting qualities that lead to an incongruous, discordant, or disagreeable relationship. Diversity, variety, or contrast of qualities does not necessarily imply incompatibility as long as harmonious relationships are maintained.

Integrity: Authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's period of significance.

List of Deteriorated Historic Buildings: The list of historic buildings that the SHPO has determined to be substantially non-compliant with the property maintenance standards in the Historic Protection Act (D.C. Official Code § 6-1104.01(a) (2002 Supp.)).

List of Vacant Historic Buildings: The list of vacant historic buildings maintained by the SHPO in accordance with D.C. Official Code §§ 42-3131.01 *et seq.* (2002 Supp.).

Location: A quality of integrity retained by a property that exists in the same place as it did during its period of significance.

Low-income owner: An owner whose household income is 80% or less of the median household income for the Washington Metropolitan Area as established from time to time by the U.S. Department of Housing and Urban Development (when used in the context of an application for demolition, alteration, or subdivision of a building or site that serves as the owner's principal place of residence, and is subject to the Act).

Materials: As a quality of integrity, the physical elements that were combined or deposited in a particular pattern or configuration to form a historic property; also see § 2302.

Mayor: The Mayor of the District of Columbia, or his or her designated agent (the "Mayor's Agent") as defined in the Historic Protection Act (D.C. Official Code § 6-1102 (8)).

Mayor's Agent: The person officially designated by a Mayor's Order to carry out specified functions pursuant to the Historic Protection Act (D.C. Official Code §§ 6-1104 through 6-1108), or the hearing officer to whom the officially designated Mayor's Agent has delegated the authority to hold public hearings pursuant to the Act (see explanatory comments in § 103).

National Historic Landmark or NHL: A district, site, building, structure, or object that possesses exceptional value and quality in illustrating or interpreting the heritage of the United States, as designated by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 (16 U.S.C. §461-467) and the National Historic Preservation Act.

National Historic Preservation Act: The National Historic Preservation Act of 1966, as amended (80 Stat. 915 *et seq.*; 16 U.S.C. 470 *et seq.*).

National Register of Historic Places or National Register: The official national record of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture, as maintained by the Secretary of the Interior pursuant to § 101 of the National Historic Preservation Act.

Necessary in the public interest: Consistent with the purposes of the Historic Protection Act as set forth in D.C. Official Code § 6-1101 (b) (see also § 2001), or necessary to allow the construction of a project of special merit.

Non-contributing building, structure, or site: A building, structure, or site located within a historic district that does not add to the district's sense of time and place and historical development (see also § 703).

Notice of infraction: An official written notice issued by a historic preservation inspector or other code enforcement official, for unlawful work subject to a civil fine established under the Civil Infractions Act or other appropriate legislation, and directing corrective action to be taken in accordance with the notice

Notice of violation: An official written notice of unlawful work issued by a historic preservation inspector or other code enforcement official, directing corrective action to be taken in accordance with the notice.

Old Georgetown Act: The Old Georgetown Act of 1950 (D.C. Official Code § 6-1201 *et seq.*).

Old Georgetown Board or OGB: The committee of three architects appointed by the Commission of Fine Arts to serve as a board of review to advise the Commission regarding permit applications referred to it pursuant to the Old Georgetown Act.

Party: In the context of a public hearing held by the Mayor's Agent, the applicant, property owner, and any affected person or organization accepted as a party by the Mayor's Agent.

Period of significance: The span of time in which a historic property attained the significance for which it meets the criteria for historic designation.

Permit Processing Division: The office within the Department of Consumer and Regulatory Affairs responsible for the processing of District of Columbia building permits, or its successor.

Person: In the context of a public hearing by the Mayor's Agent, any participant (including any individual, partnership, association, organization, corporation, public agency, board, or government unit or department) who is not a party.

Preliminary Review: The process that allows an applicant to obtain a preliminary finding from the Mayor's Agent on whether a project is consistent with the purposes of the Historic Protection Act, pursuant to D.C. Official Code § 6-1108.

Principal Façade: A building elevation that faces a street or public open space, or any other major building elevation that possesses significant architectural composition or features.

- (a) Generally, a mid-block rowhouse has a single principal façade (the front), while a corner rowhouse has two principal facades (the front and side);
- (b) An elevation facing an alley or service access is not usually a principal façade, except for an alley building, where the alley façade is usually the principal façade; and
- (c) In some instances, all four elevations of a detached building may be considered principal facades.

Raze or Razing: The destruction or removal of a structure in its entirety down to the ground. See also "demolition."

Rehabilitate or Rehabilitation: The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Replacement in kind: Replacement of an architectural feature with a feature of like material that replicates the existing feature in proportion, appearance, texture, design, detail, and dimensions.

Restore or Restoration: The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

Review Board: The Historic Preservation Review Board as defined in this chapter.

Secondary Elevation: A wall of a building that does not face a street or public open space, and that does not possess significant architectural composition or features.

- (a) Typically, the rear or alley side of a rowhouse is considered a secondary elevation.
- (b) The sides and rear of a detached building may or may not be considered secondary elevations, dependent on the circumstances.

Secretary's Standards: The Secretary of the Interior's Standards for Rehabilitation (36 CFR § 67.7, as amended).

Setting: As a quality of integrity, the physical environment of a historic property.

Shipstead-Luce Act: The Shipstead-Luce Act of 1930 (D.C. Official Code § 6-611.01).

Special merit: A plan or building having significant benefits to the District or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.

Staff: The Historic Preservation Office, serving as the administrative staff to the Mayor's Agent, State Historic Preservation Officer, or Historic Preservation Review Board.

Standards or Board's standards: The design and construction standards described in Chapters 20 through 29.

State Historic Preservation Officer or SHPO: The person designated by the Mayor to administer within the District of Columbia the historic preservation programs established by the National Historic Preservation Act; also, the administrative head of

the Historic Preservation Office.

State Review Board: In the District of Columbia, the Historic Preservation Review Board.

Stop work order: An official written directive issued by a code enforcement official, such as a historic preservation inspector, to cease all construction activity on a property until corrective action is taken in accordance with the order to address unlawful work.

Structure: Anything constructed, including a building, which requires fixed location on the ground, or attached to something having fixed location on the ground.

Subdivide or Subdivision: A division or assembly of land into one or more lots of record. Subdivision includes the division of any lot of record into two or more theoretical building sites as provided by the D.C. Zoning Regulations.

Surveyor: The Surveyor of the District of Columbia, or his or her designated agent.

Unlawful work: Any work subject to review under the Act, but undertaken without a permit properly reviewed and issued pursuant to the Act, or beyond the scope of a proper permit, or at variance with the approved plans or conditions of a proper permit

Unreasonable economic hardship: Circumstances where failure to issue a permit would amount to a taking of an owner's property without just compensation or, in the case of a low-income owner or owners, as defined in this Chapter, when failure to issue a permit would place an onerous and excessive financial burden upon the owner(s).

Workmanship: As a quality of integrity, the physical evidence of the crafts of a particular culture, people, or artisan.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority ("DCHA") hereby gives notice of the adoption of final rules concerning rent charges which offer public housing residents an option of either an income-based rent or a market-based rent. The remaining portion of the regulation is merely a renumbering of the existing sections of the regulation. Final action to adopt these rules was taken on July 14, 2004. Notice of Proposed Rulemaking was published in the D.C. Register on May 14, 2004. These final rules will be effective upon publication of this notice in the D.C. Register.

Amendment: The District of Columbia Municipal Regulations, Chapter 62, Low Rent Housing: Rent and Lease, Section 6200, is amended to read as follows:

"6200 RENT CALCULATIONS

6200.1 Each tenant shall pay, as tenant rent, one of the following:

- (a) Income-based rent as the greater of one twelfth (1/12) of thirty percent (30%) of adjusted income or one twelfth (1/12) of ten percent (10%) of annual income;
- (b) Market-based rent, if less than income-based rent, as determined by DCHA;
- (c) If the family is determined by DCHA to have no adjusted income, the family will pay minimum rent as provided in §6210; or
- (d) If the family is receiving welfare assistance from a public agency and a portion of the assistance is specifically designated to meet the family's housing costs, then tenant rent is equal to the portion of the assistance which is so designated. However, the designated portion of the assistance must be adjusted in accordance with the family's actual housing costs and must be designated for housing costs by the public agency.

- 6200.2 Any changes in tenant rent shall be stated in a special supplement to the lease, which shall, upon issuance, become a part of the dwelling lease. The family shall be provided a copy of the special supplement to the lease.
- 6200.3 The market-based rent is an estimate by DCHA of the market rent charged for comparable units in the private, unassisted market.
- (a) DCHA shall determine the market-based rent by considering factors including, but not limited to:
 - (1) the location, quality, size, unit type, and age of the unit, and
 - (2) any amenities, housing services, maintenance, and utilities provided by DCHA.
 - (b) The market-based rent will be equal to the estimated rent for which DCHA could lease the unit after preparation for occupancy. The market-based rent is not based on actual monthly costs to DCHA attributable to providing and operating the unit.
- 6200.4 DCHA shall create a schedule of market-based rents for each property by bedroom type.
- (a) The schedule of market-based rents for all properties will be reviewed and revised at least every three (3) years.
 - (b) DCHA may adjust the market-based rents for any particular property or unit if DCHA determines that the scheduled market-based rent is in excess of the amount necessary in order to lease a dwelling unit.
 - (c) A copy of the market-based rent schedule for a property will be available at each property management office or can be requested from the Client Placement Division, 1133 North Capitol Street, N.E. Suite 178, Washington, D.C. 20002-7599.
- 6200.5 At initial lease-up and with each recertification or interim recertification, DCHA will calculate the family's income-based rent. If the market-based rent, as listed in the current market-based rent

schedule for the property, is less than the family's income-based rent, the family will be changed to market-based rent.

- 6200.6 If a tenant is paying a market-based rent, the tenant shall:
- (a) submit an interim recertification in accordance with §6117 for any change in family circumstances except increases in family income. Change in family circumstances may include, but shall not be limited to, loss or reduction in income, employment, or other assistance; or increase in expenses for medical costs, child care, transportation, or education.
 - (b) provide DCHA with a completed application for continued occupancy, in accordance with §6116 once every three (3) years or upon request by DCHA.
- 6200.7 All changes in tenant rent, both income-based and market-based and whether after an interim or regular recertification, shall be implemented in accordance with §6116.10."
- 6200.8 In properties where utilities and other essential services are supplied to the tenant by DCHA, tenant rent payable to DCHA under the dwelling lease shall be the same as total tenant payment.
- 6200.9 In properties where tenants are responsible for paying for their own utility bills, the utility allowance shall be subtracted from the total tenant payment to determine that tenant rent payable to DCHA. If the tenant rent resulting from the subtraction of the utility allowance from the total payment is negative, DCHA shall send a monthly check in the amount of the difference to the tenant.
- 6200.10 Tenant shall be given a thirty (30) day written notice of an increase in contract rent.
- 6200.11 Tenant rent shall be computed after both annual income and adjusted income have been verified.
- 6200.12 Any changes in tenant rent shall be stated in a special supplement to the lease, which shall upon issuance, become a part of the dwelling lease. The tenant shall be provided a copy of the special supplement.

- 6200.13 The tenant shall receive retroactive credit to credit an administrative error.
- 6200.14 Tenants occupying property for a portion of a month at the time of move-in shall be charged a pro-rata share of the full monthly rate determined by DCHA."

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in Section 10 of the Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; 50 DCR 10982), hereby gives notice of the adoption of the following amendment to Title 26 of the District of Columbia Municipal Regulations, "Insurance", to add a new chapter, "Chapter 56, Certified Capital Companies". Final action to adopt these rules was taken on July 23, 2004. Only two typographical changes were made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on June 18, 2004, at 51 DCR 6237. These final rules will be effective upon publication in the Register.

TITLE 26 DCMR, IS AMENDED TO READ AS FOLLOWS:

A new chapter is added to read as follows:

CHAPTER 56 – CERTIFIED CAPITAL COMPANIES

5600 APPLICABILITY

- 5600.1 This chapter shall apply to all certified capital companies formed, certified, or authorized under the Act.
- 5600.2 This chapter shall apply to any investment in a certified capital company for which a premium tax credit is allocated to a certified investor for making the investment in the certified capital company.
- 5600.3 This chapter shall apply to the allocation of premium tax credits authorized under the Act.

5601 FILING APPLICATION FOR CERTIFICATION

- 5601.1 An applicant seeking certification as a certified capital company shall file an Application for Certification with the Commissioner on or after the application date.
- 5601.2 An Application for Certification filed prior to the application date shall be treated as having been filed on the application date.

- 5601.3 An applicant, within five (5) business days after the applicant has or should have knowledge that any material information that the applicant supplied in its Application for Certification filed pursuant to § 5601.1 is found to be inaccurate or obsolete, shall file an amended Application for Certification correcting or updating the information provided in the Application for Certification.
- 5601.4 The submission of new or corrected material information under § 5601.3 shall not cause a change in the date on which the application was deemed originally received by the Department.
- 5601.5 The Commissioner shall make a copy of the Application for Certification form available directly from the Commissioner in paper copy format, by electronic mail with an attached Word file, or by accessing the Commissioner's website at: www.disb.dc.gov.

5602 REQUIREMENTS OF AN APPLICATION FOR CERTIFICATION

- 5602.1 The Application for Certification shall contain the following:
- (a) A completed Application for Certification;
 - (b) A nonrefundable application fee in the amount of fifteen thousand dollars (\$15,000) in the form of a cashier's check, certified check, or company check made payable to the D.C. Treasurer;
 - (c) An audited balance sheet, with an unqualified opinion from an independent certified public accountant, as of a date not more than thirty-five (35) days prior to the date that the Application for Certification is filed with the Commissioner;
 - (d) Evidence (which may be the audited balance sheet described in §5602.1(c)) of an equity capitalization of at least five hundred thousand dollars (\$500,000) in the form of unencumbered cash, marketable securities or other liquid assets;
 - (e) An affidavit from the applicant affirming that the applicant, if certified under the Act, will maintain an equity capitalization of at least five hundred thousand dollars (\$500,000), except for reductions due to qualified distributions, until the allocation date;
 - (f) An affidavit from the applicant affirming that the applicant, within sixty (60) days of receiving certification, will maintain its principal office within the District and will maintain a set of its books, records, files, and any other information required by the Commissioner as a condition of certification or as required by this chapter;

- (g) An affidavit from the applicant affirming that at least two (2) of the principals of the applicant or persons employed or engaged to manage the funds of the applicant have:
 - (1) At least three (3) years of experience in the venture capital business, which may include investments made in connection with a state or federally sponsored venture capital program; and
 - (2) Not violated any federal or state insurance, securities or banking law or been convicted of any crime involving fraud;
- (h) A detailed description, and supporting documentation, that demonstrates how each of the persons providing affidavits pursuant to § 5602.1(g) qualify as having at least three (3) years of experience in the venture capital business, which shall include, but not be limited to:
 - (1) A detailed resume with a listing of references including reference telephone numbers; and
 - (2) A listing of all applicable licenses that each individual holds (or has held within the last ten (10) years). Such listing shall indicate whether the license is active and in good standing, the date on which it will expire or did expire, whether any license has been revoked, the date of revocation and an explanation surrounding the revocation, whether any disciplinary action has ever been imposed with regard to the license, the date of the disciplinary action and a description surrounding the disciplinary action;
- (i) A list, if any, of any fines, penalties, or other sanctions or actions by any state, federal, or local regulatory entity relating to violations of any type;
- (j) The applicant's overall investment strategy and the applicant's three (3) year business plan including an organizational chart;
- (k) The name, address, and phone number for each principal, manager, officer, or director, and each person owning fifteen percent (15%) or more of the voting equity interest or other voting ownership interest of the applicant.
- (l) A copy of any offering materials involving the sale of securities of the applicant or the proposed certified capital company;
- (m) A copy of the applicant's organizational documents and a description of the applicant's business history, if any; and
- (n) Any other information requested by the Commissioner or required by the Act.

5602.2 For purposes of section 3(d) of the Act, the term "principal office" shall mean the location in the District that is the primary place where the investment functions of a certified capital company are performed and the principal location for books and records of the certified capital company.

5603 REVIEW OF APPLICATION FOR CERTIFICATION

5603.1 The Commissioner shall review an Application for Certification and all required documents to determine whether the applicant satisfies the requirements for certification as a certified capital company set forth in section 3 of the Act and §5602.

5603.2 Except as provided in §5603.6 or § 5603.7, the Commissioner shall approve or disapprove the certification of an applicant as a certified capital company within thirty (30) days of the date of receipt of a complete Application for Certification filed by the Applicant.

5603.3 If the Commissioner determines that an Application for Certification is incomplete or the Commissioner requests supplemental information, the Commissioner, within ten (10) days of the date of receipt of an Application for Certification, shall notify the applicant, in writing, that the Application is incomplete or that the Commissioner requires the applicant to submit additional information to supplement the Application for Certification.

5603.4 The notice required pursuant to §5603.3 shall provide a list of the documentation or information required to complete or supplement the Application for Certification.

5603.5 In the event an Application for Certification filed with the Department is incomplete or if the Commissioner requests additional information in connection with a filed Application for Certification, the Application for Certification shall be deemed received on the date it was originally submitted only if the applicant submits the additional information within fifteen (15) days after the date of the Commissioner's written request.

5603.6 Upon receiving all missing or requested information set forth in a notice provided pursuant to §5603.3, the Commissioner shall have fifteen (15) days from the day that the missing or requested information is submitted, to approve or reject the Application for Certification.

5603.7 Upon receiving an amended Application for Certification correcting or updating the information provided in the Application for Certification pursuant to § 5601.3, the Commissioner shall have fifteen (15) days from the day that the missing or requested information is submitted, in addition to the thirty (30) day period provided in § 5603.2, to approve or reject the Application for Certification.

5603.8 An Application for Certification shall be deemed withdrawn, and the Commissioner shall have no obligation to provide additional notices to the

applicant or take further action on the Application for Certification if the applicant fails to provide to the Department missing or requested information for an Application for Certification within fifteen (15) days after the notice provided pursuant to §5603.3.

5603.9 Upon the Commissioner's disapproval of an Application for Certification, the Commissioner shall provide written notice to the applicant of the disapproval and the requirements of section 3 of the Act or §5603 that the applicant failed to satisfy.

5603.10 An applicant that receives a notice of disapproval pursuant to §5603.9 may file an amended Application for Certification within fifteen (15) days of receipt of a notice of disapproval issued by the Commissioner pursuant to §5603.9.

5603.11 Within fifteen (15) days of receipt of an amended Application for Certification filed pursuant to §5603.10, the Commissioner shall review the Application for Certification and certify, or refuse to certify, the applicant as a certified capital company.

5604 ALLOCATION OF PREMIUM TAX CREDITS

5604.1 A Premium Tax Credit Allocation Request shall be made pursuant to a Premium Tax Credit Allocation Request Form delivered to the Commissioner.

5604.2 The Premium Tax Credit Allocation Request Form shall include the following two affidavits of each prospective certified investor:

- (a) An affidavit of the certified investor attesting that it is legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount of allocated premium tax credits, even if the amount of allocated premium tax credits is less than the amount of the request, subject only to the receipt of an allocation pursuant to Section 5 of the Act; and
- (b) An second affidavit of the certified investor attesting that it complies with its requirements under Sections 3(h) and 5(b) of the Act.

5604.3 The Commissioner shall accept Premium Tax Credit Allocation Requests filed pursuant to § 5604.1 on or before the premium tax credit allocation request filing date.

5604.4 Not later than six (6) business days after receiving notice from the Commissioner allocating premium tax credits to its certified investors, a certified capital company shall file a report with the Department that provides, for each certified investor that was allocated premium tax credits that failed to provide its required certified capital within five (5) business days after the certified capital company received notice from the Commissioner allocating premium tax credits to its certified investors, the name of the certified investor and the amount of certified

capital the certified investor failed to invest in the certified capital company pursuant to its obligation as established by its affidavit filed pursuant to §5604.2(a).

5605 QUALIFIED INVESTMENTS

5605.1 Prior to making a proposed investment in a specific business, a certified capital company may, at its option, request from the Commissioner a written opinion that such business will be considered a qualified business.

5605.2 Within fifteen (15) business days from the receipt of a request for an opinion filed pursuant to §5605.1, the Commissioner shall provide notice to the certified capital company requesting the opinion of the Department's determination whether the business meets the definition of a qualified business and the basis for the Department's determination.

5605.3 If the Commissioner fails to notify the certified capital company of its determination within the fifteen (15) business-day period required by §5605.2, the business upon which the request for determination under §5605.1 was based, shall be deemed to be a qualified business.

5605.4 A business that meets the requirements of a qualified business at the time of the initial investment in the business by a certified capital company shall remain classified as a qualified business for purposes of the initial investment by the certified capital company.

5605.5 For purposes of section 2(12)(A)(i) of the Act, the term "principal business operations" shall mean the location where the chief or principal affairs and business of a business are transacted.

5606 WAIVER OF QUALIFIED BUSINESS REQUIREMENTS

5606.1 A certified capital company may request the Commissioner to waive one or more of the requirements for qualification of a qualified business for a business that was classified as a qualified business at the time that the certified capital company first made an investment in the business by filing a letter requesting the waiver of a qualification.

5606.2 A letter requesting the Commissioner to waive one or more of the requirements for qualification of a qualified business shall contain the following information:

- (a) The name of the certified capital company requesting the waiver;
- (b) The name of the business for which the certified capital company is requesting the waiver;
- (c) The qualification(s) of a qualified business for which the certified capital company is requesting the waiver;

- (d) The amount of capital that the certified capital company proposes to invest in the business for which the certified capital company is requesting the waiver; and
- (e) A statement that demonstrates how the proposed investment by certified capital company in the business for which the certified capital company is requesting the waiver will further economic development in the District, and why the same investment in a qualified business cannot achieve the same economic development purposes as the investment in the business for which the certified capital company is requesting the waiver.

5607 FEES

- 5607.1 In addition to the ten thousand dollar (\$10,000) annual, non-refundable certification fee due on or before January 31 required by section 6(g)(4) of the Act, a certified capital company shall pay to the Commissioner a late fee in the amount of five thousand dollars (\$5,000) if the certified capital company submits its certification fee required by section 6(g)(4) of the Act after January 31.
- 5607.2 If a certified capital company fails to file a report required by section 6(g) of the Act on a timely basis, the certified capital company shall pay to the Department a daily late fee in the amount of fifty dollars (\$50) per day for each report filed after the due date established by section 6(g) of the Act, unless the late fee is waived by the Commissioner.
- 5607.3 In connection with the annual review conducted by the Commissioner of a certified capital company pursuant to section 8(a) of the Act, the certified capital company shall pay an annual review fee in the amount of three thousand dollars (\$3,000), for the cost of the annual review.

5608 WAIVER OF RECAPTURE OR FORFEITURE UPON DECERTIFICATION

- 5608.1 A certified capital company may request the Commissioner to waive the recapture or forfeiture of premium tax credits upon the decertification of the certified capital company pursuant to section 8(c) of the Act by filing a Request for Waiver of Recapture or Forfeiture Form within ten (10) business days of receiving notice from the Commissioner of the decertification of the certified capital company.
- 5608.2 A request for a waiver filed pursuant to §5608.1 shall provide all the facts, circumstances, and other information that demonstrate that the waiver of the recapture or forfeiture of premium tax credits will further economic development in the District.
- 5608.3 The Commissioner shall review a request for a waiver filed pursuant to §5608.1 and, in his or her sole discretion, may approve or disapprove the request for a waiver within thirty (30) days of receipt of the request.

- 5608.4 The Commissioner shall notify the decertified certified capital company of the Commissioner's determination made pursuant to §5608.3.
- 5608.5 The following violations of section 6 of the Act, unless waived by the Commissioner, are material and shall be grounds for decertification of a certified capital company:
- (a) A violation of section 6(a), (c), (d), (f), (g)(1), or (g)(4) of the Act; and
 - (b) More than two (2) violations of the requirements established by section 6(g)(2) and (3) of the Act.

5609 DISTRIBUTIONS

- 5609.1 Any proposed distribution by a certified capital company pursuant to section 7(b) of the Act shall be audited by a nationally recognized certified public accounting firm acceptable to the Commissioner, if the Commissioner directs that an audit be conducted.
- 5609.2 An audit conducted pursuant to § 5609.1 shall be conducted at the expense of the certified capital company.

5610 TRANSFER OF PREMIUM TAX CREDITS

- 5610.1 Within fifteen (15) days after the transfer or sale of premium tax credits, the transferring certified investor shall notify the Commissioner in writing of the:
- (a) Name of the new holder of the transferred premium tax credits;
 - (b) Amount of premium tax credits transferred;
 - (c) Date the transfer occurred;
 - (d) NAIC Number of the transferring certified investor;
 - (e) NAIC Number of the new holder of the transferred premium tax credits; and
 - (f) Remaining balance of premium tax credits held by the transferring certified investor.
- 5610.2 A certified investor that transfers or sells premium tax credits and fails to file the notice required by §5610.1 within fifteen (15) days after the transfer or sale of the premium tax credits, shall be subject to a fine in the amount of five hundred dollars (\$500).

5611 FILINGS, NOTICES AND WRITTEN COMMUNICATIONS

5611.1 All filings, notices and other communications required or permitted under the Act or this chapter shall be in writing and shall delivered by hand, courier, or registered or certified U.S. Mail, postage prepaid, addressed to:

- (a) If to the Commissioner of the Department of Insurance, Securities and Banking, at 810 First Street, NE, Suite 701, Washington, DC 20002;
- (b) If to a certified investor, at the certified investor's address set forth on the certified investor's last premium tax filing; or
- (c) If to an applicant or certified capital company, at the applicant's or certified capital company's address set forth on the applicant's or certified capital company's Application for Certification, as may be updated by written notice to the Commissioner.

5611.2 For all purposes of the Act and this chapter, each notice provided pursuant to §5611.1 shall be treated as effective or having been given when delivered by hand or by courier, or, if mailed, at the earlier of its receipt or seventy-two (72) hours after the notice has been deposited in a regularly maintained receptacle for the deposit of the United States mail.

5612 FULL INVESTMENT

5612.1 Except as provided in § 5612.2, a certified capital company that has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments shall not be subject to the regulation of the Commissioner provided that the certified capital company provides the Commissioner with audited financial statements, or an agreed upon procedures letter, that demonstrate that the certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments, and the Commissioner certifies that the certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments.

5612.2 Notwithstanding § 5612.1, the requirements to apportion distributions to the District under subsection 7(b)(2) of the Act shall continue after a certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital.

5613 FORMS

5613.1 The forms set forth below, as well as any instructions accompanying them, are hereby adopted and incorporated by reference into these rules:

- (a) Form CAP-1, Application for Certification;
- (b) Form CAP-2, Premium Tax Credit Allocation Request Form; and
- (c) Form CAP-3, Request for Waiver of Recapture or Forfeiture Form.

5699 DEFINITIONS

As used in this chapter, the following terms shall have the meanings indicated:

Act - the Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; 50 DCR 10982).

Applicant - a person who files an Application for Certification to be certified as a certified capital company under the Act.

Application date - August 9, 2004.

Application for Certification - the application form adopted by the Commissioner pursuant to which an applicant can apply for certification as a certified capital company, including, but not limited to, any additional information required by the Department.

Department - the Department of Insurance, Securities and Banking.

NAIC Number - the identification number assigned to an insurance company by the National Association of Insurance Commissioners.

Rules - these rules promulgated pursuant to the Act.

Premium tax credit allocation request filing date - November 1, 2004.

Premium Tax Credit Allocation Request Form - the form adopted by the Commissioner pursuant to which a certified capital company on behalf of its respective certified investors makes a request for allocation of premium tax credits.